

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)

Delta Hotel, Saint John, N.B., on December 19th 2007.

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Distribution and Customer Service Corporation (DISCO) for
approval of changes in its Charges, Rates and Tolls (Includes
Interim Rate Proposal)

Delta Hotel, Saint John, N.B., on December 19th 2007.

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: Good morning, Mr. Chairman, Members of the
Board. Terry Morrison and Edward Keyes on behalf of the
Applicant. And with me at counsel table today is Sharon
MacFarlane, Mike Gorman and Darren Murphy.

CHAIRMAN: Thank you, Mr. Morrison. Canadian Manufacturers
& Exporters NB Division?

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MR. LAWSON: Good morning, Mr. Chairman, Members of the Board. Gary Lawson and with me is David Plante.

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

MR. KIDD: Good morning, Mr. Chair and Members of the Board. Scott Kidd here for the Conservation Council.

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

MR. MACDOUGALL: Good morning, Mr. Chair. David MacDougall and I am joined today by Dave Charleson of Enbridge Gas New Brunswick.

CHAIRMAN: Thank you, Mr. MacDougall. Irving Oil Limited? Not here today. JD Irving Pulp & Paper Group?

MR. WOLFE: Good morning, Mr. Chairman. Wayne Wolfe.

CHAIRMAN: Thank you, Mr. Wolfe. NB Forest Products Association? Not present. Dr. Sollows? Dr. Sollows not in attendance. Utilities Municipal?

MR. ZED: Good morning, Mr. Chair, Members of the Board. Peter Zed and I am joined by Dana Young, Eric Marr, Michael Couturier and Daryl Shonoman.

CHAIRMAN: Thank you, Mr. Zed. Vibrant Communities Saint John? Mr. Peacock is not here. Public Intervenor?

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

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

MS. DESMOND: Ellen Desmond, Mr. Chair. And from Board staff, Doug Goss, John Lawton, Dave Young, Dave Keenan and Board Consultant, Andrew Logan.

CHAIRMAN: Thank you, Ms. Desmond. Well I guess the evidence has all been concluded and we are here today for final argument. We will proceed first with the Applicant. So Mr. Morrison, if you are ready to proceed?

MR. KEYES: Just one issue, Mr. Chairman, if I might. Yesterday the Public Intervenor and I got together to review the confidential transcript to see what part of it could be released in to the public. And we did agree to a certain portion of the confidential transcript being made public. And I have the page references and line numbers if you would like me to read that into the record.

CHAIRMAN: Perhaps you could give me the page numbers and whatnot and we will have a look at that at one of the breaks.

MR. KEYES: Okay.

CHAIRMAN: So perhaps you can go ahead and give us the references.

MR. KEYES: It was the December 13th 2007 transcript. And

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2 the page going into the public record would start at page 21,
3 line 14 through to and including page 31, line 8. And
4 then starting again on page 32 at line 2 through to and
5 including the end of page 33. And on page 42, line 6 to
6 and including line 10 and again on page 42, line 16 to and
7 including line 24.

8 CHAIRMAN: All right. The only reference there that I don't
9 think I got down was on page 32, I think you said you
10 began at line 2 and was it all of page 33?

11 MR. KEYES: All of page -- the rest of page 32 and to the
12 end of page 33.

13 CHAIRMAN: Thank you. Any other preliminary matters?

14 MR. MORRISON: Not that I am aware of, Mr. Chairman.

15 CHAIRMAN: All right, Mr. Morrison, you may proceed.

16 MR. MORRISON: Thank you, Mr. Chairman. Good morning,
17 Members of the Board. This has been an extensive process.
18 In this hearing there have been over 50 exhibits marked.
19 There are 30 binders of evidence. And over 1,500
20 responses to interrogatories have been filed and of course
21 there has been almost four weeks of testimony.
22 There are many issues that have been raised, some of them
23 only in passing, and I don't intend to address all of them
24 because if I did we would not be out of here by Christmas
25 for sure. It is clear, however, that several

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issues have been the focus of attention during this proceeding.

In my submission there has been no serious challenge on cross examination or any evidence filed challenging the OM&A costs, the fuel procurement, PROMOD, or the capacity payments charged to DISCO.

In addition, during the hearing there was little examination or challenge really to the underlying costs of either Genco or Nuclearco. In any event, the PPAs are not cost of service agreements, but rather agreements which are cost based.

And I know that may sound like a different -- a distinction without a difference, but there is a difference. They are designed to permit the generators to recover their costs over the respective terms of the agreements. Accordingly there cannot be a line by line direct comparison between the underlying generation costs on the one hand and the PPA charges on the other.

Nevertheless the filed evidence demonstrates a clear and unequivocal correlation between the underlying generation costs and the PPA charges in the test year. And on that point I would recommend the Board to refer to table B of exhibit A-60, which I submit clearly demonstrates this correlation.

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2 Notwithstanding the fact that many of the costs which make
3 up DISCO's revenue requirement were not disputed in this
4 proceeding, there are several significant issues which
5 have been raised and which I intend to address in this
6 summation. And these fall into three broad categories.
7 There is revenue requirement issues, there is of course
8 the PDVSA settlement and there are rate design issues.
9 Dealing first with the revenue requirement issues, in my
10 submission there are four central issues which have
11 emerged. First is the amendments to the PPAs. The second
12 is discussion with respect to the inter-company charges in
13 the service level agreements, recovery of net income and
14 NUG dispatch.

15 Dealing first with the PPA amendments, questions have been
16 raised with respect to three of those amendments. First
17 is the Belledune boiler water wall upgrade, secondly it's
18 the amendment with respect to the hydro flow adjustment,
19 and finally, the amendment which deals with the inclusion
20 of hedges in the vesting energy price.

21 I will deal first with the boiler water wall upgrade at
22 Belledune. The issues regarding the Belledune boiler
23 water wall upgrade centre around three fundamental
24 questions.

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2 First, do the fuel savings of burning a mix of 25 percent
3 petcoke justify the cost of the upgrade? Secondly, did
4 the burning of 25 percent petcoke cause a deterioration of
5 the boiler? And thirdly, does the PPA allow for the
6 boiler water wall upgrade and/or was it prudent for DISCO
7 to pay for the upgrade.

8 I would suggest that there is no controversy surrounding
9 the first issue. The fuel cost savings to DISCO from
10 burning a 25 percent mixture of petcoke are clearly
11 demonstrated in the business case which was thoroughly
12 reviewed by the operating committee. And that can be
13 found at exhibit A-21, appendix 2.

14 Furthermore, you will recall that Mr. Kennedy stated that
15 the fuel savings to DISCO, and therefore to its
16 ratepayers, are in the vicinity of five to \$7 million per
17 year for the life of the plant. This is further
18 demonstrated in Ms. MacFarlane's testimony through the
19 document that was marked for identification as 14(C). The
20 capital cost of the boiler water wall upgrade is \$9.1
21 million. The payback period is short. In my submission
22 there can be no doubt that from a cost benefit perspective
23 the boiler water wall upgrade makes good business sense.
24 So the issue then becomes whether the burning of the
25 mixture of petcoke caused the boiler water wall

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deterioration. In other words, but for the burning of 25 percent petcoke, would Genco have had to upgrade the boiler water wall? I concede that if Genco would have had to upgrade the boiler water wall regardless of the 25 percent petcoke mixture then DISCO should not pay for the upgrade. The evidence, however, in my submission, clearly shows that the boiler water wall with minor repair would have functioned perfectly well for the balance of the life of the plant if the petcoke mixture were not burned. You will recall that Board member, Mr. Barnett, asked some questions. In response to the questions posed, and that's exhibit A-53, I submit clearly demonstrates that the damage to the boiler occurred only after the petcoke mixture was increased to 25 percent. When the damage was discovered Genco had two options. It could make minor repairs to the boiler, eliminate or greatly reduce the use of petcoke for the remaining life of the plant and instal a monitoring system for the water wall. That was option 1. Or upgrade the boiler water wall to enable continuous burn of the 25 percent petcoke mixture. Of those two choices, only the boiler water wall upgrade provided benefits to Disco and its ratepayers. In 2006 Genco made minor repairs to the boiler water wall at

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its cost. Genco would not have undertaken the boiler water wall upgrade in 2007 unless it would be reimbursed by DISCO for those costs.

The PPA is silent as to which party is responsible for the water wall upgrade. You will recall in my questioning of Mr. Strunk, we went through section 7.1 and 7.2. Neither or those sections addresses the issue.

In any event, Genco is under no obligation to carry out the boiler water wall upgrade and DISCO was under no obligation to agree to pay for it. Given the clear benefits to DISCO's ratepayers of the continued ability to burn 25 percent petcoke at Belledune, the operating committee recommended that the vesting agreement be amended to permit the boiler water wall upgrade. The matter was submitted to the Torys law firm who drafted the amendment to the PPA which was subsequently executed.

In his report Mr. Strunk agrees that the Belledune boiler water wall upgrade would be reasonable if certain conditions were met, and those are the plant could be operated without the upgrade by not using petcoke. If Genco is entitled to eliminate or greatly reduce the use of petcoke at Belledune. And if DISCO can charge DISCO -- or sorry -- if Genco can charge DISCO for any increased fuel costs as a result of the change in fuelling.

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2 I submit that all three of the conditions put forward by
3 Mr. Strunk are satisfied. First, the evidence establishes
4 that Genco could have continued to operate Belledune for
5 its remaining life, with minor repairs and reducing or
6 eliminating the amount of petcoke.

7 Second, under section 8.2 of the vesting agreement, Genco
8 is to operate its fleet in accordance with good utility
9 practice. Genco is therefore under an obligation not to
10 operate in a way that would cause damage to its
11 generators. And I believe yesterday Mr. Strunk agreed
12 with that proposition. Genco is therefore not only
13 entitled, but obligated to change the fuelling of
14 Belledune to greatly reduce or eliminate the percentage of
15 petcoke.

16 Third, if Genco operates using good utility practice,
17 clearly it is entitled to include the legitimate costs of
18 fuel in the vesting energy charge.

19 The last issue I would like to address regarding the
20 Belledune boiler upgrade is the matter of the inclusion of
21 the definition of "environmental costs" in the amendment.

22 And you will recall that that arose as a result of
23 questioning from the Board to me on that issue.

24 In that response I advised that the lawyer drafting the
25 amendment used the term "environmental costs" for I

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believe I used the term "definitional purposes". Mr. Good explained that the boiler upgrade was not due to changes in environmental standards. And therefore its costs would not be considered "environmental costs" as defined in section 7.2 of the vesting agreement.

However, section 7.2 of the vesting agreement sets out a rigorous review and approval process for environmental costs. The operating committee believed that this review and approval process was an appropriate review mechanism for the boiler upgrade. The term "environmental costs" was included in the amendment for the sole purpose of referencing and incorporating that review procedure for the review of the boiler upgrade costs. And I refer the Board to exhibit A-49 in its PI IR-72 for a discussion of that issue.

After conducting due diligence of the boiler water wall upgrade, the operating committee determined the upgrade was for DISCO's benefit and therefore should be at DISCO's expense, as it ultimately conferred significant benefit on DISCO's ratepayers.

The second amendment that has been questioned is the hydro flow adjustment. And the Public Intervenor has questioned whether it was reasonable for DISCO to agree to amend the vesting agreement to change the manner in which

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the hydro flow adjustment is calculated.

It must be noted that the change in calculation was made in August 2005. That change was made by the operating committee and was based on its interpretation of section 6.12 of the vesting agreement. That section did not specify the methodology to be used in calculating the hydro flow adjustment. It was therefore open to the operating committee to interpret the section in its ongoing management of the vesting agreement.

DISCO believed the correct methodology for pricing the hydro adjustment was at the top of in-province load, and that excludes exports, because that is the basis for pricing the vesting energy price, and the hydro adjustment is an adjustment to that vesting energy price.

Further, the hydro adjustment, as is defined in article 6, is the same article defining the vesting energy price. So there is a clear link between the two. DISCO retained an independent expert opinion confirming its interpretation of section 6.12, and I believe you can find reference to that in exhibit A-49 which is PI IR-68.

But we should be clear that the hydro adjustment clause in the PPA does not affect the revenue requirement or rates in 2007/2008 or in any other year. The revenue requirement in rates are always based prospectively on

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long term average hydro flow.

The ratepayer is protected from year to year fluctuations in hydro levels by virtue of rates being set on the long term average. And that is fixed in the vesting agreement.

The year to year fluctuations, whether they are gains or losses, flow to DISCO's bottom line as profits or losses, and therefore to its shareholders. And just to emphasize the point, I repeat, the hydro flow adjustment has no impact on the revenue requirement in the test year or in any year.

Further, this matter was extensively canvassed during the 2005 rate hearing before your predecessor, the PUB. And this matter was included with the other amendments which were submitted to legal counsel, and in order to remove any possible misinterpretation in the future, and that was the reason and basis for the amendment as it relates to the hydro flow adjustment.

I would like to tun now to the amendment with respect to hedges which seems to have received the most attention, if you will. The Public Intervenor has questioned whether it is prudent for DISCO to agree to the inclusion of hedges for 2007 and 2008.

At the centre of this issue is the interpretation of schedule 6.2 to the vesting agreement. And I believe it's

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schedule 6.2, paragraph 7, which I drew Mr. Strunk to
yesterday.

And that section simply states that in setting the vesting energy price, all hedges entered into prior to October 1st 2004 are to be included. Now Mr. Strunk's interpretation of that provision is that only the hedges prior to October 1st 2004 are to be included to the exclusion of any post restructuring hedges. It is important to note that there is no language in schedule 6.2 that specifically excludes these post 2004 hedges.

I would also caution the Board against placing too much reliance on Mr. Strunk's opinion on the interpretation of the contract. While he is versed in PPAs, he is not a lawyer and I submit is not qualified to give a legal opinion or an interpretive opinion on a legal contract which is governed by New Brunswick law.

But in any event, I submit that the better interpretation is that all hedges are to be included, and the purpose of the provision was simply to ensure that those hedges entered into prior to restructuring were picked up.

The interpretation I recommend to you is consistent with the evidence and the purpose and intent of the vesting agreement. You will recall Ms. MacFarlane

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testified where she said that the intent of the PPAs was to emulate how the old NB Power operated only in a restructured environment, and you can find that on page 1032 of the transcript.

You will also recall in the evidence that NB Power's hedging program began in early 2000, prior to restructuring. It was, I submit, the clear intention of the vesting agreement that this policy be continued after restructuring. Certainly this was the interpretation of the operating committee and the manner in which the vesting energy price has been set since 2004.

Again this matter was included with the other amendments which were submitted to legal counsel, again in order to remove any misinterpretation in the future. In my submission, the amendment simply confirms the manner in which the operating committee has been managing the PPA since restructuring.

Now Mr. Strunk contends that there has been a change, a change in the treatment of hedges, and any such changes to the PPAs must be reviewed by this Board for prudence. For the reasons already stated, I submit that there has not been any change to the manner in which hedges have been used in determining the vesting energy price.

But in any event, there is compelling evidence on the

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2 record that the hedging policy is a conservative mechanistic
3 approach which reduces the risk to DISCO's ratepayers of
4 market volatility.

5 There was a risk advisory report which is filed, and it's
6 exhibit A-21, and it was prepared by independent experts.

7 You can find that at -- it's actually volume 3 of 3,
8 appendix 3 of exhibit A-21. In that report it states, "NB
9 Power has achieved an industry best practice standard with
10 respect to the continued application of its mechanistic
11 hedge strategy which has served to increase cash flow
12 predictablity and limit the upside exposure to rising
13 commodity prices." End quote.

14 Indeed, Mr. Strunk agrees that spreading the hedges over
15 an 18 month period potentially reduces the price risk
16 because of exposure to a particular market condition at
17 the time the vesting energy price is set. And you can
18 find that at page 9 of his December report.

19 I submit that Mr. Strunk's objection is not with respect
20 to the reasonableness of the hedging policy itself, and I
21 believe he said yesterday. But that DISCO has agreed to
22 include hedges in a year when the hedges are unfavourable.

23 In fact Mr. Strunk concedes that NB Power's approach may
24 in fact be reasonable. And I make the same reference to
25 his report, page 9.

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2 On cross examination Mr. Strunk conceded that if the
3 hedging program had a net benefit in the test year, then
4 it would be prudent for DISCO to agree to include the
5 hedges. You will recall I asked him that if DISCO were in
6 the money in this year would it be prudent to grab the
7 cash, I believe was the term I used, and he said, yes, it
8 would.

9 Well you can't have it both ways. If you look at Mr.
10 Strunk's position in reality what he is saying is that it
11 is prudent in the years when the hedges are favourable, or
12 in a positive position, and it's imprudent in the years
13 when they are not.

14 Finally, the central contention of the evidence, and this
15 is important to understand what the purpose of the hedging
16 program is, is that DISCO averages into hedges over an 18
17 month period to avoid the risk of market aberrations on
18 the day the vesting price is set.

19 Whether the fixed contract price will ultimately result in
20 the settlement gain or loss is not known at the time the
21 hedge is transacted and is not relevant to the objective
22 of securing a fixed price in advance with certainty.

23 The evidence demonstrates that the settlement value of a
24 hedge on the day the vesting price is set cannot be

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looked at in isolation, because -- and I'm going to quote here and this quote comes from a question, not the answer, the question put forward by the Public Intervenor. It can't be looked at in isolation because, quote, "It changes every business day and even minute to minute within a business day in accordance with changing markets."

In the end the settlement value, together with the forward market price on the day the vesting price is set and on any day, is equal to the fixed contract price that DISCO has secured for its customers for the test year. That fixed price is what is included in setting the vesting price. The purpose of a hedge is to result in the fixed price and the gains and losses cannot be looked at in isolation of the market prices.

In his evidence Mr. Strunk emphasized his view that the hedging program is under Genco's control, and you will recall that I questioned him on that yesterday. He said that because it is under Genco's control, it is logical that the vesting agreement would prohibit the pass through of the hedges.

In my cross examination I brought Mr. Strunk to considerable evidence on file which I submit demonstrates that the hedging program is not controlled y Genco. In

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spite of this evidence Mr. Strunk held fast to his position.

I think I tried to lead the horse to water, I think was my term.

Mr. Strunk did agree, however, that DISCO has a say in how the hedging is done and must concur on the hedging. I did get him to admit to that. And you will find that at page 2242 of the transcript.

And I refer the Board to page 9 of Mr. Strunk's November report. In it he says, if DISCO is allowing Genco to pass through hedge costs, then DISCO must have a say in those costs and must approve the hedges. Well given Mr. Strunk's admission, it is my submission that even he would agree it meets his criteria and it is appropriate for DISCO to allow Genco to pass through the hedge costs.

I would like to turn now to the service level agreements.

These are the inter-company charges of course. You will recall that Ms. Leaman was on the stand. She said that in October 2004, as part of the restructuring, service level agreements, which I think we have been referring to as SLAs, were entered into by DISCO with Genco, Transco and Holdco, for the provision of services.

The agreements were for a term of three-and-a-half

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years and they expire on March 31st of next year. These agreements were filed with DISCO's original evidence on April 19th of this year.

Through these agreements DISCO avoids having to hire additional employees or contract out for such services to meet operation or capital requirements. DISCO and its customers benefit from contracting with Transco and Genco in that they have -- Transco and Genco, that is -- have the existing infrastructure in place necessary to meet safety standards and perform required work.

The infrastructure includes specialized equipment and trained employees with expertise and knowledge of DISCO equipment. DISCO and its customers also benefit from the economies of scale afforded by sharing services provided by the centralized and often specialized Holdco groups, and by Holdco employees' knowledge of the DISCO business processes and supporting infrastructures.

There is no doubt that DISCO would have to hire additional staff or contract these services through alternative resources if they were not provided by the sister companies.

The services from affiliates are cost-based. Labour costs, where rates are driven by collective agreements, represent the greatest portion of these costs. Other

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costs include materials and hired services where purchases are made in compliance with the requirements of the Public Purchasing Act. I think this should give the Board great comfort that the costs that are flowing through the SLAs are indeed reasonable.

Now the Public Intervenor in cross examination has suggested that the contracts with the affiliates should have been subject to the provisions of the Public Purchasing Act. Now if you read the Public Purchasing Act, it is my submission that the clear intent of that act was to create a centralized purchasing body through the Department of Supply and Services. And it was set up for government departments and government funded bodies, like the NB Power group.

If they desire to purchase services either through the minister of supply and services or out in the market price, the purpose of the act was to ensure non-government entities were treated fairly with respect to the supply of goods and services to government and government funded bodies.

If you look at the clear intent of the Public Purchasing Act, it was really to allow the private sector to compete on a level playing field and I'm loathe to say to try to eliminate patronage and nepotism from

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contracting services in the private sector.

It is my submission that the Act only applies to those transactions between government or government funded bodies and non-government entities. It was not intended to apply to transactions either between government departments or between government funded bodies, which would include of course transactions between the NB Power group of companies.

And I also refer to section 3.2 of the Electricity Act which specifically legislates Holdco as a service provider to the subsidiaries. Further, if you look at section 2 of the Electricity Act, it says that if there is a conflict between the Act and any other act which include the Public Purchasing Act, the Electricity Act prevails.

Also the SLA pricing and cost pricing model were reviewed by an independent third party in September of 2005, which confirmed that the SLA models were based on best practice.

Allocation of corporate service cost was based on an independent review, completed by KPMG, assuring that DISCO is receiving a reasonable allocation. So this as well provides great comfort to the Board, in my submission.

I would like to turn now to the question of net income. In this rate application DISCO is seeking to

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recover net income equivalent to 1.25 times interest coverage.

This is an interest coverage ratio which the Public Utilities Board deemed appropriate for NB Power in 1991. And in its June 2006 decision, the PUB reaffirmed that an interest coverage ratio of 1.25 times is the appropriate level of return for DISCO.

In support of its net income request, DISCO filed expert evidence of Kathleen McShane, an expert in utility cost of capital with extensive experience.

Ms. McShane concludes that a utility such as DISCO requires an interest coverage ratio of 1.7 times in order to attain self-sufficiency. This conclusion is based on an analysis of DISCO's risk profile in comparison to other crown owned utilities.

However, Ms. McShane believes that an appropriate interim objective is for DISCO to move to a position of self-sufficiency over a period of approximately 10 years. It is her opinion that an interest coverage ratio of 1.25 times is an intermediate objective which sets DISCO on the path to self-sufficiency.

It is important to note that Ms. McShane's conclusion and recommendation is valid whether or not government policy is to fully capitalize DISCO and have it borrow on

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its own in the capital markets. And you can see that at page 1638 of the transcript.

On cross examination Ms. Desmond asked Ms. McShane what the appropriate interest coverage ratio would be if DISCO were a fully integrated crown owned utility.

Ms. McShane stated that the interest coverage ratio would probably be the same, at 1.75 times.

This evidence reinforces the reasonableness, in my submission, of DISCO's proposed interest coverage ratio and underlines the fact that it is not dependent upon full capitalization of DISCO.

The Public Intervenor submitted expert evidence by Dr. Lawrence Booth. The crux of Dr. Booth's opinion can be found at page 12 of his report. And it states "Further, since the explicit statements of NB Power are that its mission is to provide power at the lowest possible cost, and it has been told by the Province that it should breakeven, the obvious interpretation is that the appropriate interest coverage ratio is 1."

I submit that the essence of Dr. Booth's opinion is that since DISCO has been told by the Province that it should quote "breakeven" then there should be no net income.

On cross examination yesterday by Mr. Keyes, Dr. Booth

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2 acknowledged that no regulator in Canada has taken the
3 position that a crown owned electric utility does not need
4 to have any retained earnings, nor that a 1 times interest
5 coverage ratio is appropriate. No regulator has done
6 that.

7 You will recall that Ms. Desmond questioned Mr. Hay and
8 Ms. MacFarlane on this issue on whether breakeven means
9 zero net income. Mr. Hay explained that the government's
10 direction of breakeven was ambiguous, I guess is the best
11 way to put it, and that NB Power is striving to interpret
12 that direction. And that can be found at page 1069 of the
13 transcript.

14 Ms. MacFarlane went on to explain that DISCO, with the
15 assistance of its consultant, developed a definition of
16 breakeven. She explained that for NB Power, breakeven
17 doesn't mean zero.

18 And I will quote from page 1073 of the transcript. And
19 this is Ms. MacFarlane's testimony. "In fact in a
20 business like ours with a significant amount of risk
21 outside of management's control, it can't mean zero. In
22 fact budgeting for zero would no doubt lead to losses in
23 many, many years. So we have taken, as Mr. Hay as
24 indicated, with the assistance of a consultant, our view
25 of the definition of breakeven. And it is consistent with

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self-sufficiency, which means you must have a net income."

Further a 1 times interest coverage with no net income, DISCO would make no payments in lieu of income taxes to Electric Finance Corporation, which is clearly contemplated by the Electricity Act.

With no retained earnings, DISCO would never be able to pay dividends to EFC. EFC, at the time of restructuring, assumed approximately \$400 million in NB Power debt. And the Act contemplates this debt being serviced through payments in lieu of income, taxes and dividends. And you can see that in sections 36 and 37 of the Act.

Therefore it is my submission that a 1 times interest coverage that never allows payment of taxes or dividends frustrates the intent of the Act and is not an appropriate interpretation of the definition of breakeven.

Ms. McShane clearly stated that an interest coverage ratio of 1.7 times would enable DISCO to service all of its obligations including interest expense and the payment of debt and fund its capital expenditures while building and maintaining a reasonable equity cushion through the retention of net income.

DISCO's proposal for net income equal to 1.25 times interest coverage is merely the first step towards this

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goal while acknowledging the principle of gradualism.

It is my submission that the net income requested by DISCO is conservative and more than reasonable and is supported by the Board's 2006 decision.

Perhaps the most compelling evidence is the statement Dr. Booth made during his direct examination by Mr. Theriault yesterday. And you can find that at page 2215 and '16.

And at those pages, if you refer to the transcript, he explains his view that DISCO will continue to be treated by government as a crown corporation and not as a privately-run distribution utility.

And he concludes by saying at page 2216, "So at this point I see no reason to depart from existing Board rulings in terms of interest coverage ratios or existing practice for the distribution utility."

As I mentioned earlier, the existing Board rulings, and there are only two, 1991 and 2006, the Board ruled that the appropriate level of return is 1.25 times interest coverage.

Just have a few seconds, Mr. Chairman.

CHAIRMAN: Certainly.

MR. MORRISON: I would like to turn briefly to the matter that was raised yesterday by Mr. Strunk and that is the

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dispatch of the NUGs.

Mr. Strunk's contention is that if Bayside could be redispached there could possibly be savings of approximately \$11 million. It is my submission that the Board should view this evidence with the greatest scepticism.

First, the premise of the calculation is based on a hypothetical proposition. It would only materialize if first, there were negotiation opportunities with Bayside and secondly, that the owners of Bayside would agree to a change in their contract. Purely hypothetical.

Secondly, the calculation of the \$11 million itself is not reliable. Mr. Strunk conceded that the model he used was simplistic. He did not consider the impacts re dispatch would have on export benefits. And further the calculation is based on data from 2005 and 2006.

Finally, neither the NUG contracts or any information on their costs is on the record in this proceeding. I submit it is impossible and indeed folly to attempt to make any judgments on the cost ramifications of a hypothetical redispach of the NUGs without the evidence required to make such a judgment.

I would like to turn now to the Orimulsion settlement. Holdco concluded a settlement of the PDVSA lawsuit on

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August 2nd of this year. The settlement had a benefit value of \$333 million.

This was, from a regulatory perspective, an extraordinary event. Although it had no statutory obligation to do so, DISCO immediately came before this Board to ensure that the benefits of the settlement flowed to ratepayers as soon as possible.

The settlement results in an annual levelized benefit to ratepayers of approximately \$25 million for 17 years. It resulted in an immediate reduction in rates of 3.2 percent. This settlement is a good thing for ratepayers. The establishment and operation of the deferral account has already been determined by the Board. Indeed the Public Intervenor's expert, Mr. Strunk, takes no issue with the manner in which the in kind portion of the settlement is being passed to DISCO customers. And you can see that at page 11 of his December report.

It seems that the sole issue of controversy is the fact that approximately \$47 million of the cash portion of the settlement is being credited to the shareholder.

Ms. MacFarlane explained that the costs associated with the Orimulsion fuel delivery system were \$47 million. Those costs were never capitalized and they were written off. That writeoff formed part of the NB Power debt,

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which was assumed by the Province on restructuring.

The ratepayers of DISCO have never been charged a single penny of that \$47 million. Not a single penny of that \$47 million came out of the ratepayers' pockets.

The Public Intervenor relies on section 4.3.4 of the original vesting agreement to support the view that all proceeds of the settlement are to flow to DISCO.

However, as I underlined with Mr. Strunk yesterday, that section does not use the term "proceeds". It does not say that all proceeds of the settlement are to flow to DISCO, but rather that all damages are to go to DISCO.

The purpose of damages is to put the parties in the position they would have been in but for the breach. And I'm quoting from the Canadian Encyclopedic Digest. But you can find virtually the same passage in McGarter On Damages or numerous Supreme Court of Canada decisions. But I'm going to quote the principle of damages. "The general object underlying the rules for the assessment of damages is so far as possible by means of a monetary award, to place the plaintiff in the position he or she would have been in had he or she not suffered the wrong complained of, whether that wrong is a tort or a breach of contract."

I submit that if the \$47 million is paid to DISCO, it

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would violate that principle. The ratepayers would in effect receive compensation for sums that they never paid. The ratepayers would be receiving a bonus or a windfall. This would be akin to unjust enrichment at the expense of the party that actually suffered the loss, the taxpayers. Although this is the issue that I'm going to turn to now, and it has not really been probed throughout the hearing, it is an issue that was raised early on. And it is one that the Board needs to address in its deliberations. And that is the question of rebates.

As you know, DISCO filed for an interim rate increase on April 19th, which was as soon as possible after the coming into force of the new Act and the establishment of this Board.

The Board approved the interim rate of 9.6 percent effective June 8th of this year. On August 9th, once the Orimulsion settlement was reached, DISCO filed additional evidence in support of a reduction to the interim rate. Subsequently the Board ruled that the interim rate should be reduced by 3.2 percent, from 9.6 percent to 6.4 percent. And that was effective August 28th.

As a result, DISCO's rate increase for the period April 1st to June 7th was zero. DISCO's rate increase for the period June 8th to August 27th was 9.6 percent.

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2 And DISCO's rate reduction related to the Orimulsion
3 settlement on August 28th was 3.2 percent, resulting in an
4 adjusted interim rate for the period August 28th to
5 present of 6.4 percent.

6 Should a rebate be ordered, the Board must consider to
7 which date the rebate applies. If the rebate relates to
8 any component of DISCO's revenue requirement not connected
9 to the Orimulsion settlement, we submit that the effective
10 date should be June 8th 2007.

11 If the rebate in any way relates to the 3.2 percent
12 reduction due to the Orimulsion settlement, the effective
13 date should be no early than August 28th, the date when
14 customers began receiving the benefit of the settlement
15 through the rate reduction.

16 DISCO also strongly urges that should there be any changes
17 to the Orimulsion settlement from that which has been
18 proposed by DISCO, the effect of such changes should flow
19 through the deferral account on a prospective basis and
20 not affect base rates.

21 I'm going to conclude my submission on the part on rate
22 design issues, Mr. Chairman and Members of the Board.

23 There are four rate design issues that I would like to
24 briefly address. It is the industrial rate increase, the
25 question of farms, elimination of the residential

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declining block and the service charge.

Dealing first with the industrial rates, Canadian Manufacturers & Exporters, and particularly its expert, Mark Drazen, assert that the cost allocation study filed by DISCO is overallocating costs to the industrial class. While CME did not file a detailed customer class allocation study, it believes there are significant issues which raise doubts about the accuracy of the cost allocation methodology used by DISCO. Because of this uncertainty, CME is encouraging the Board to limit the rate increase to the industrial class to the system average.

The Board can only base its decision on the evidence that is before it.

The only customer class allocation study on the record addressing the matter of the allocation of costs to the industrial class is the one that was filed by DISCO.

In preparing its cost allocation study, DISCO used the methodology approved by the PUB in its December 2005 CARD ruling. While no cost allocation study is perfect, the DISCO cost allocation study is the best evidence and indeed the only evidence upon which this Board can make a decision on revenue cost ratios and ultimately how they affect rate design.

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2 In its October 2nd ruling this Board ruled that the
3 approved methodology upon which DISCO's filed CCAS is
4 based would apply for setting 2007/2008 rates.

5 It should also be noted that if the large industrial class
6 receives a lower increase, then another rate class must
7 receive a higher increase.

8 DISCO's proposal, in my submission, is a balanced
9 approach, recognizing customer impacts and the need to
10 achieve the 95 to 105 target range for revenue to cost
11 ratios.

12 I would like to speak a little bit about farms. I never
13 thought I would ever say that. The Public Intervenor's
14 expert witness has proposed that larger farms be removed
15 from the residential class. He has proposed that a third
16 rate block be established to capture these farm customers.

17 And he is proposing this as a transitory measure.

18 While DISCO does not object to examining the issue of
19 farms in the residential class, it does have several
20 concerns. First migrating farms to the General Service
21 class, as ultimately proposed by Mr. Knecht, will
22 inevitably have ramifications on customer rate impacts and
23 on cost allocation issues for farms and other classes. It
24 should not be done in isolation and is best dealt with in

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a proceeding where all rate design issues can be explored.

I refer the Board to the comments you made in your May 31st decision of this year. And that was the decision regarding the studies to be filed by DISCO.

And in dealing with the issue of seasonal rates, this Board stated this is because all of the proposed rates form a package that is intended to jointly recover the costs of operation. If a significant change to one element of the package, there will be a need to make other changes in order to compensate.

Finally, Mr. Knecht agreed that a change in this historic rate structure should not be done without giving farmers an opportunity to express their views.

And none were formal intervenors in this proceeding.

Although I can't speak as to whether the Public Intervenor had consultations with them or not. But certainly none were public -- formal intervenors in this proceeding.

I would like to turn now to the elimination of the residential declining block. There is one issue, and perhaps the only issue in this proceeding upon which there appears to be consensus. And that is that the residential declining block should be eliminated. The only question is how quickly.

Enbridge Gas and Vibrant Communities Saint John urged

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the Board to eliminate the declining block immediately. DISCO is following the direction of the PUB in the 2005 CARD ruling to eliminate the declining block by 2010.

It is EGNB's position that the CARD ruling was overturned by the PUB's June '06 rate decision, which provided for a more aggressive elimination of the declining block. That decision of course as we all know is reversed by Order-in-council.

It is DISCO's position that the CARD ruling stands because the generic nature of the proceeding allowed for a broader application of the ruling regardless of the specifics of this rate application. In other words, the CARD ruling was a generic hearing which was specifically designed to deal with those very issues.

Everyone agrees that the declining block should be eliminated as quickly as practicable. However, I think it is fair to say that of all the parties in this proceeding, DISCO is more sensitive than others to the question of overall rate impacts.

It is submitted that the present course of eliminating the declining block by 2010 is the appropriate balance between sending the right price signal and moderating customer rate impacts.

The last rate design issue I would like to address is

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the service charge. In its rate design DISCO is proposing that the urban service charge not be increased and remain the same, which is at the pre-interim rate level of \$19.16 per month. DISCO is not recommending an increase.

Vibrant Communities Saint John argues that the service charge should be reduced to \$13.64 on the basis that it represents a toll on customers to use the electricity distribution system.

I refer the Board to exhibit A-6(1), appendix 2, schedule 2. And that was the schedule from the cost allocation study that I put before Mr. Peacock in cross examination.

And that study shows that the actual costs associated with the customer charge are \$22.06 per month. While DISCO's proposal is largely cost-based, it is still less than the actual costs attributable to the service charge.

Mr. Peacock in his evidence compared DISCO's service charge to those of other utilities and pointed out that it and Maritime Electric are both at the very high end of this national comparison.

I refer the Board to Mr. Larlee's evidence, and that is at page 1749 of the transcript, where he identifies that the reasons for varying service charges between utilities is due to differing methods of evaluation of

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customer costs and the historical nature of service charges.

In conclusion, Mr. Chairman, members of the Board, it is submitted that DISCO has clearly demonstrated the need for its revenue requirement, including its very conservative net income of 1.25 times interest coverage. Certainly the majority of DISCO's costs, approximately 80 percent, flow to it through the capacity payments, and vesting energy charges in the PPAs.

As I mentioned earlier, the PPAs were not designed to be cost of service agreements and therefore cannot be a line -- there cannot be a line-to-line comparison of the underlying generation costs to the PPA charges.

Nevertheless DISCO has clearly demonstrated that there is a direct correlation between the underlying generation costs and the PPA charges in the test year.

The vast majority of the remainder of the costs relate to OM&A. There was virtually no cross examination on these costs or other costs to DISCO's revenue requirement, and no evidence filed to suggest they are not reasonable.

DISCO on the other hand, in my submission, has amply demonstrated the proper management and reasonableness of these costs. I submit that they must be considered just and reasonable.

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2 The Board indicated in its ruling of July 16th of this
3 year that it expected DISCO to demonstrate that it has
4 taken reasonable steps to minimize costs through the SLAs
5 and PPAs and to identify lower cost options for the supply
6 of energy, if they exist.

7 With respect to the PPAs I have already mentioned that the
8 costs flowing to DISCO through the PPAs have an
9 unequivocal correlation to the underlying generation
10 costs. The underlying generation costs of Genco and
11 Nuclearco have been fully explained in the evidence and
12 have largely gone, in my submission, unchallenged.

13 With respect to the SLAs, the evidence clearly shows that
14 the inter-company supply strategy maximizes efficiencies
15 and delivers services on a cost basis. The evidence also
16 demonstrates that these costs are allocated fairly as was
17 verified by an independent consultant.

18 The issue of a cheaper alternative supply of electricity
19 is in many ways moot. You will recall that Mr. Strunk was
20 critical of DISCO for not conducting an analysis of
21 alternative supply options.

22 However, there is no point in conducting an analysis of
23 alternative supplies when under section 2.4.2 of the
24 vesting agreement DISCO cannot reduce its nomination in
25 order to enter into an alternative arrangement with a

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generator other than Genco.

In addition, there is evidence on the record resulting from an RFP issued by Genco for the supply of power during the Point Lepreau outage, which demonstrates that Genco's costs are more than competitive.

Finally, DISCO has addressed three rate design priorities in its proposal. It makes measurable progress in moving the revenue to cost ratios closer to the target range of 95 to 105, in some cases modestly, I admit. But nevertheless it does make measurable progress.

The proposal reduces the residential declining block rate structure by one-third. And it continues to make progress in bringing the two General Service rate classes together. This Board has, as does each regulator in setting rates, a dual responsibility. First, it must have just and reasonable rates that are fair and equitable to all the customers of the utility.

Second, it must allow the utility to earn a return on its investment sufficient to allow it to attract capital and thus continue to offer the service for which it has the monopoly.

Those are all my comments with respect to the revenue requirement, Mr. Chairman. I know that you did want me to

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address the issue of the CME motion. And I don't know whether you want to take a short break before I do that.

CHAIRMAN: I would be happy to have you continue. But maybe you may need the short break.

MR. MORRISON: I think I can get through it reasonably quickly.

CHAIRMAN: And then we will hear from you on that issue at this time as well.

MR. MORRISON: CME has brought a motion before the Board and has asked the Board to order a cost allocation hearing after the conclusion of this rate case.

First I will address the issue of whether a cost allocation hearing is appropriate at this time. You will recall that the question of a cost allocation hearing was discussed at the September 27th Motions Day hearing. And the Board, you, ruled as follows. "The Board intends to accept the currently approved method for use in allocating costs for 2007/2008."

So I ask you what new information has been put on the record to justify the Board overturning its previous ruling? It is my submission that there is very little or none.

CME's expert has raised issues about the classification of generation costs. But there is nothing

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new here. It was canvassed in the CARD hearing that was completed less than two years ago. That issue was front and center.

There is no reason to believe that the Board would reach a different result than that which was reached in the 2005 hearing, unless there is some new, compelling evidence.

Also, Mr. Chairman, it would be, in my submission, unfair to DISCO to change the rules of the game halfway through this rate hearing -- well, in this case near the end of the rate hearing.

As mentioned earlier, we completed a generic cost allocation hearing less than two years ago. Extensive evidence was filed. The Board ordered a number of studies to be completed and filed. And DISCO filed those studies.

I would suggest that the Board now has sufficient information to accept or reject those recommendations.

Generic cost allocation hearings are not normally done in connection with every rate application. To embark on that course so soon after the thorough review in 2005, and without any meaningful change in circumstances, in my view is unnecessary.

Mr. Lawson has recognized a key jurisdictional issue.

There is considerable doubt that the legislation permits

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the Board to order a cost allocation hearing to be conducted after it renders a decision in this rate application.

In order to circumvent this obvious jurisdictional dilemma, CME is suggesting that the interim rate be extended until a cost allocation hearing is concluded.

Mr. Chairman and Members of the Board, extending the interim rate is the worse possible outcome for my client and puts DISCO in an impossible situation.

First, it will take a minimum of 10 weeks for DISCO to retain experts and prepare the appropriate evidence for a CARD hearing. By my calculation, assuming that the evidence could be filed by the 1st of April, taking into consideration the interrogatory process and the normal regulatory schedule of the Board, by my estimation that would mean that a cost allocation hearing could not begin until at least August or possibly September of next year.

By that time DISCO will have been operating under an interim rate for well into its second fiscal year. This creates significant difficulties for DISCO.

First, because the interim rate can change as a result of the decision in the cost allocation hearing, if one is held, DISCO may not be able to finalize its financial statements for 2007/2008 or may not be able to record any

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of the \$75 million in increased revenue due to uncertainty.

DISCO will not be able to determine whether a rate increase or decrease is required for 2008/2009 because it will not know if it is going to under or overrecover in rates.

If a rate increase below 3 percent, for example, was expected for next year, DISCO could not exercise that option. And that is the option where it can increase or decrease rates within 3 percent without Board approval.

Because the outcome of the cost allocation hearing could result in a rate requirement above 3 percent.

And as was discussed in the last hearing before the PUB, DISCO cannot implement a 3 percent increase and apply to the Board in the same year. It can either do one or the other. But it can't do both. In short DISCO will be in limbo with a serious risk of underrecovering in 2008/2009.

Finally and perhaps most important, DISCO could be liable to rebate customers for a period of almost two years if the cost allocation hearing results in a significant shift in costs among rate classes.

It will not, however, if I understand the Board's position in this regard, be able to recover those costs from rate classes which benefit from such a ruling. And

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2 the customers will not receive their rebate for up to two
3 years.

4 I believe the Board recognized these difficulties when it
5 ruled that the interim rate would not extend beyond March
6 31st 2008. A change in that decision would have serious
7 and significant impacts on DISCO.

8 Those are all my comments, Mr. Chairman and Members of the
9 Board. Thank you for your attention.

10 CHAIRMAN: Thank you, Mr. Morrison. Any questions from any
11 Members of the Board with respect to Mr. Morrison's
12 presentation? Mr. Johnston?

13 VICE CHAIRMAN: Mr. Morrison, I would like to talk to you
14 about your comments on the PDVSA settlement. And
15 specifically you mentioned that had the 47 million not
16 been paid back to the shareholder but had gone through to
17 DISCO, that it would have been a windfall to DISCO.
18 Is that your position?

19 MR. MORRISON: Yes.

20 VICE CHAIRMAN: What I would like to know, to begin this
21 discussion, is whether you would characterize the benefits
22 that are flowing to DISCO as a windfall?

23 MR. MORRISON: No. Because the benefits ultimately flow to
24 the ratepayer. And the ratepayer has been picking up the
25 costs through the capacity payment of those costs that

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2 were booked for the Coleson Cove refurbishment.

3 VICE CHAIRMAN: Well, you have led precisely to my point, I
4 guess. Is do we have a good idea of those costs that you
5 have just referred to in the evidence?

6 MR. MORRISON: I believe we do. I don't know if I could --
7 at this point. We know that in rough numbers the total
8 cost of refurbishment was approximately \$702 million. Of
9 that amount 47 million approximately related to the
10 Orimulsion delivery system.

11 So if you take 47 million from 702' you would have a rough
12 idea of how much of the Orimulsion refurbishment costs
13 would be embedded in the capacity payment flowing through
14 the tolling agreement.

15 VICE CHAIRMAN: But do we have to distinguish between the
16 refurbishment costs which related to Orimulsion and those
17 which had other purposes?

18 There has been a lot of discussion with the accountants,
19 with Ms. MacFarlane on this topic. And I am sincerely a
20 bit muddled on that point.

21 MR. MORRISON: Well, I can understand your muddlement, if
22 that is a word.

23 VICE CHAIRMAN: We have had lots of new words in this
24 hearing, Mr. Morrison. So there is one more. I think it
25 all started off with boxization. No.

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MR. MORRISON: And actually we were discussing it yesterday.

VICE CHAIRMAN: Bucketization.

MR. MORRISON: And the Chairman said that he hoped that
wouldn't appear in my final argument. And it didn't until
now.

Let me try to clear it up as much as it can be cleared up.

The total cost of refurbishment generally was \$702
million. Of that, 47 million didn't go to ratepayers. It
was absorbed in debt, assumed by the taxpayer. So you
have then the difference, which is somewhere in the
vicinity of \$650 million.

That money, if you will, would not have been spent if
there hadn't been some expectation of Orimulsion.

However, having spent the money, there is a residual
benefit to DISCO, to the ratepayer, to Coleson Cove, in
that it now has a plant that can burn cheaper fuel, has an
extended life and can satisfy -- has emission controls
that will meet emerging environmental standards. So there
is a residual value to that.

That amount was never quantified, if you will, what the
residual value of that would be. And I think as I
mentioned -- and I don't want to get too far in this in
argument.

But I did mention during the in-camera portion is that

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2 that probably would have been an issue of considerable debate
3 had the PDVSA lawsuit gone to trial, whether there was any
4 betterment to the utility as a result of the
5 refurbishment.

6 I just have to be very careful about how far I go with it,
7 Mr. Johnston.

8 So you will not be able to find in the evidence, I don't
9 believe, evaluation of what this residual benefit to the
10 utility is as a result of the refurbishment.

11 I don't know if that makes it clearer or less clearer.

12 But it is probably the best and most I can say.

13 VICE CHAIRMAN: The second comment I wanted to make was with
14 respect to the GS classes. You limited your comments in
15 your submission this morning on that to making the comment
16 that the two classes were moving closer together.

17 Given that they do seem to be by far the furthest outside
18 the 95 to 105 band, can you explain DISCO's position in
19 not moving more aggressively with respect to bringing
20 those classes down?

21 MR. MORRISON: Well, I don't know if I can -- I'm certainly
22 no expert in rate design or cost allocation. But rate
23 design is more art than science, quite frankly. And there
24 is a number of judgments that go into putting forward a
25 rate design.

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And as I understand it, in my discussions with Mr. Larlee in his evidence, they made modest improvements in the GS I and GS II classes. But every time you do one thing with one rate class, it does have a ramification on another rate class.

So it is a balancing act. And ultimately it is the Board's job to conclude -- to find that balance. DISCO has put forward its proposal. Others have put forward proposals.

As Mr. Larlee said in his evidence, there is no perfect cost allocation study. There is no perfect rate design. It really is, although there is some science input in terms of it should be reasonably cost-based and reasonably based on a cost allocation study.

In the final analysis the balancing of all the competing interests, gradualism, the principles of Bonbright, really requires judgment. And I guess the only thing I can say, this rate design is DISCO's best judgment. This Board may feel otherwise.

VICE CHAIRMAN: Thank you very much.

MR. BARNETT: Mr. Morrison, this probably follows up on a question of Mr. Johnston. When you speak about the residual benefits to DISCO and Coleson Cove, when you have netted out the fuel handling, transportation system, the

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2 47 million.

3 Are you indicating that there is no benefit to -- no
4 residual benefit to Genco as well in that process, that
5 all those residual benefits to Coleson Cove are DISCO's?

6 MR. MORRISON: The only residual benefit I could think of,
7 Mr. Barnett, would be if Coleson Cove would contribute to
8 export benefit margins which would be outside the band.
9 Because obviously if it is just fuel costs, those got
10 passed through to DISCO. So all the benefits flow to
11 DISCO.

12 The only time that I could see that -- if this residual
13 benefit somehow contributed to an increase in export
14 benefits outside the band which would go into Genco's
15 pocket. Given the current market prices for heavy fuel
16 oil, I doubt that Coleson is being dispatched into the
17 export market.

18 MR. BARNETT: Thank you. Just a couple of other questions.

19 But one, specifically I believe in your final argument.
20 I would just like to know if this is in evidence. You
21 were talking about using the net income and interest
22 coverage. You made reference to -- and forgive me if my
23 word is not exactly right -- the EFC assumed 400 million
24 of the NB Power debt at the time of restructuring. That
25 may have been in evidence before.

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Is that in evidence in this hearing, Mr. Morrison?

MR. MORRISON: I don't know the answer to that, Mr. Barnett.

I don't know whether it is specifically in the prefiled evidence or if it came up in the course of discussions.

I know sometimes it seems that this rate hearing has been ongoing almost nonstop for three years. And the lines sometimes blur. But I can certainly check and find out.

MR. BARNETT: Okay.

MR. MORRISON: I would point out at least I have been told that it is public information.

MR. BARNETT: Thank you. I would like to just now -- in your discussion or position in regards to a CARD hearing or cost allocation. And maybe I missed it. But I understand where you are coming from in terms of the dangers of an interim rate decision.

Did you anywhere -- I would like you to talk about -- did you indicate at anytime when you thought it might be appropriate to have a cost allocation rate design hearing?

And did you indicate -- I think you indicated that there was some concern about the Board's authority to actually order one outside of a rate application.

I would just like to get your comments on both of those please.

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MR. MORRISON: I will deal with the first one, Mr. Barnett, because I think it goes to the nub of the issue which is does the Board have authority to order DISCO to come back next year to conduct a cost allocation hearing.

This issue or similar issues came up in the last rate hearing. Certainly the Act is not crystal-clear. But it is my view that this Board gets jurisdiction over DISCO when DISCO files an application under section 103 of the Electricity Act, which is a rate application.

And if you look at the Electricity Act and the Public Utilities -- the previous Public Utilities Act as a whole, NB Power was never subject to general regulatory oversight of any regulator until 1991. But it wasn't regulated at all.

And when it became regulated in 1991 it was only very -- in a very circumscribed area. And that was on rates and rates only.

So unlike your jurisdiction over pipelines or gas distribution, you don't have general regulatory oversight over DISCO. So your jurisdiction is limited to when DISCO applies for a rate application. So once you render a decision in a rate application, this Board then becomes functus. Your jurisdiction ends.

In my view there is considerable doubt as to whether

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or not you could then go in and have a CARD hearing after you render a decision in this case.

So as I understand it, and I'm sure Mr. Lawson will speak to it when he takes the microphone, what Mr. Lawson is suggesting is that you keep your jurisdiction open.

In other words, you don't close the door. You don't render a final decision on rates. You extend the interim rate until the CARD hearing is done. And then if there is changes that come out of that you can adjust the interim rate.

As I said, and for the reasons I have said, that is just a nightmare for DISCO. That creates so many difficulties that if we were to go down that route I don't know what DISCO would do. It would just be a real dog's breakfast, to be honest with you.

So that is my understanding of the law and the conundrum that we are in, quite frankly.

As to when the cost allocation hearing would be appropriate, I don't think there is any rule of thumb. I have heard people talk that, you know, every four or five years is a good time to revisit these things, which seems to me to be appropriate.

I know that Mr. -- I don't know if it is Mr. Drazen indicated or -- I can't remember which witness now -- but

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indicated that perhaps once the Government's plans for NB Power are more fully known in the spring, we know what the direction is, that may be an appropriate time to revisit cost allocation issues.

If you are asking my own view, I would say that probably the most appropriate time would be around 2009/2010 if you give it the four or five-year rule.

MR. BARNETT: Would you suggest it would be efficient for there to be a cost allocation, possibly rate design hearing prior to another rate case?

Although I hear you, in your view the Board does not have jurisdiction except in connection with a rate application.

MR. MORRISON: The approach that was followed certainly in 1991, which is the first time NB Power was regulated -- and of course at that point it was a blank slate. The regulator knew nothing about the utility.

And so scheduled -- once the utility applied for its rate application, the utility -- the Board then ordered a series of generic hearings in order to educate the Board, to understand the issues and to resolve issues like rate design, cost of capital.

There was customer service issues. They had a series of generic hearings that were held before the rate case.

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2 So that by the time you got to the rate case you had a

3 regulator that had a lot of information and knew what the

4 utility was about, knew what -- and a lot of these issues

5 got off the table, so that the rate case could deal with

6 rate, revenue requirement issues. And all these other

7 issues were pretty much fleshed out.

8 Personally I think that is a logical approach, that if we

9 had a rate case in a couple of years that the first thing

10 the Board would do would be order a generic cost

11 allocation hearing.

12 MR. BARNETT: But as part of an application? I'm still

13 struggling with the Board's jurisdiction, in your view,

14 without there being an application.

15 MR. MORRISON: Without an application I don't think the

16 Board can do it. But as soon as DISCO makes an

17 application then the Board can order a cost allocation

18 hearing.

19 MR. BARNETT: And that would clearly then extend the process

20 for the rate application, would it not?

21 MR. MORRISON: It would. It would make it a somewhat

22 lengthier process, yes.

23 MR. BARNETT: Thank you, Mr. Morrison.

24 CHAIRMAN: Thank you for your presentation, Mr. Morrison.

25 We will take a break now and be back at about 11:15.

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2 I guess next on the list is Canadian Manufacturers &
3 Exporters, NB Division. Thank you.

4 (Short Recess)

5 CHAIRMAN: Mr. Lawson, are you ready to proceed with your
6 final argument?

7 MR. LAWSON: I am, Mr. Chairman. Thank you very much. I
8 will attempt to be brief, but I'm not promising to be
9 brief.

10 I'm going to deal firstly with the issue of the motion for
11 cost allocation study that we have presented. Some of
12 what I am saying in it will also equally apply with
13 respect -- or will apply with respect to the argument on
14 the application generally.

15 I would like to just start with the comment that -- Mr.
16 Chairman, you did comment at the Motions Day on September
17 27th that this decision would be based on the CARD
18 decision of 2005 -- using the CARD decision of 2005.

19 Mr. Morrison did mention that, you know, really little has
20 changed. I think that's not quite right. I think a
21 couple of things that have to be considered by this Board.
22 One is that since that time there has been evidence filed
23 by ourselves and others which put into question the issue
24 of the accuracy of the 2005 CARD decision as it applies to
25 current costs.

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2 The one thing I think that everybody has agreed, at least
3 anybody who has addressed the issue, Mr. Larlee has, Mr.
4 Knecht has, and I submit the 2005 CARD decision by the PUB
5 has, all agreed that an accurate allocation of costs is
6 critical.

7 So while it may be part art and part science, the
8 objective is to, as accurately as possible, allocate costs
9 to the appropriate class, and the appropriate classes of
10 course, those who cause the costs to be incurred. And
11 given that, I think the Board has to consider whether or
12 not it has confidence that the 2005 CARD decision in fact
13 as accurately as possible, never precisely, it will not be
14 perfect, but as accurately as possible, allocates costs
15 between classes.

16 And the reason of course for it being critical is its
17 impact for not being accurate is pretty profound. I mean,
18 we are not talking here about the impact of 1,000 or 5,000
19 or \$10,000 here. Percentages in this case, as you can
20 appreciate, represent conceivably millions and millions of
21 dollars for a class, and some of the classes such as my
22 client's class is a relatively small class. So it's not
23 even being spread amongst a lot of people.

24 So I think everybody would agree that it is essential that
25 there be an accurate reflection of costs in the

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decision by the Board.

In terms of whether or not the current 2005 -- or the most current 2005 decision by the PUB is accurate, I think there has been a bit of a reflection. First, I comment obviously in 2005 NB Power did present a different cost allocation than what ultimately shook out in the Board's decision. So they obviously thought in 2005 that there should be a different method of allocating costs in 2005 than what the Board decided.

We also have before you the evidence of Mr. Drazen who has indicated that in his view, there has been an improper, I will describe it, it's not the term he used, but an inappropriate allocation of excess costs to the large industrial class.

He has indicated, in his opinion, which I think it should be noted was unchallenged in cross examination, that those reallocation of costs would result with a 6.4 percent increase, revenue to cost ratio for the large industrial of .97 rather than .92. So that sort of shows the significance of ensuring the classes have been properly allocated their costs.

He did indicate, however, that obviously he didn't do a full cost allocation study for this hearing. It was impractical to try to do that. In fact, when we asked him

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to do his evidence, we asked him to identify the very high level issue that might at least point out the shortcomings of the current cost allocation study in the CARD decision from last time. And it was with that in mind that he developed the evidence that he did.

Mr. Knecht I think also has, perhaps for different reasons, identified that there are good reasons for some reallocation of costs. He wasn't saying necessarily there needs to be a CARD decision, but again on the basis that the objectives this Board has to set is ensuring as accurate an allocation of cost of classes as it can, I think he has raised a few issues.

For example, the issue of the farm was raised earlier, the moving of the farm out of the residential class elsewhere would require a determination of where do they properly belong and a reevaluation of costs in cost allocation in those circumstances as well.

In fact Mr. Knecht, at page 1854, line 6, of the transcript indicated in cross examination by myself that conceptually I don't agree with what the Board has adopted, referring to the CARD decision in 2005. So he has in fact said that.

Now he did go on -- in fairness he did go on and say, which isn't unusual. So he is not saying that he is

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always right but he too is saying that he doesn't think conceptually the method of cost allocation adopted in 2005 is completely accurate.

But most important of all, I think, is the reference to the decision itself by the Board in -- the Public Utilities Board in 2005. If you look at the 2005 decision -- and I'm going to quote a little bit from that decision, because -- and Mr. Larlee referred to this. I referred to it in cross examination with Mr. Larlee. And Mr. Larlee had indicated that it was his view that the Board in this part of the decision was referring to the issue around the NUGs and the lack of costs with respect to the NUGs. And we submit that that in our opinion is not the case at all, and I will read you the portion of the decision, because I do think it's very important given that you are being asked to make a decision on the CARD -- this is part of the CARD decision.

It starts off after talking about the NUGS, then in the next paragraph, and I'm now referring to pages 22 and 23 of the December 21st 2005 decision of the PUB -- it talks about NUGs, it then goes on and says, exit fees have not been established.

So it has moved from NUGs, moved in my view to talk about exit fees, and I won't bore you with that, and it

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goes on in the next paragraph and says, a competitive market does not exist in New Brunswick. I think there has been an acknowledgement that that continues to be the case today.

The next paragraph reads, and I apologize for boring you with this, but the absence of a competitive market for energy and capacity means that a careful analysis of the actual costs of generation should occur to best establish fair and equitable rates. A careful analysis of actual costs of generation.

However, no detailed cost information on the actual generation facilities was provided. And the Board does not have authority to order it to be provided. This places the Board in a very difficult position. It does not have all the information that clearly exists that would normally be available to assist in setting rates. The Board will, however, reluctantly fulfil its obligation to set rates. We consider that the most appropriate way to proceed in these circumstances is to approve a method for the classification of generation costs that will provide a reasonable approximation of the underlying -- the actual underlying costs. Such a method may be used until either a competitive market develops, which it hasn't, or detailed cost information is forthcoming from

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the NB Power group of companies. And then it went on and said that the Board considers that the various proposals represented by the parties represent substitutes for detailed examination of the actual costs.

So the Board in that decision was saying, we don't have detailed costs and we can't get them. And I submit that the absence of being able to get those were by virtue of section 156.

And we submit that, and I refer you to the Board's decision on -- your Board -- your decision on July 16th with respect to the issue of section 156, on page 15, towards the end of the decision the Board said: As stated earlier in this ruling the Board considers it appropriate for DISCO to disclose the underlying generation and other costs and notes, as it had earlier, that DISCO has no objection to such disclosure.

Well we submit that the CARD decision was the best that could be done under the circumstances in 2005. But that's not what the objective of the CARD is, to do the best you can is with what you have to work with. The Board said this should be -- this will stay in place until we get more detailed information.

I submit the detailed information should now be available. DISCO has indicated that it would make

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available all generation costs and therefore this Board is in a much better position to make a decision on what is an accurate allocation of costs.

And we are not stupid about this, We do not know what the final outcome of a CARD decision will be. Secondly, I don't think the CME has as, one of their stated purposes in life, to keep lawyers busy. So they are not proposing this because they are anxious to participate in another hearing of the Energy and Utility Board. But it is so important to make sure that the right costs are allocated correctly that they want -- they think it's necessary to propose it.

I will get to the timing issue in a second.

The basic question with respect to the issue of a cost allocation is with respect to the supply costs, the cost of purchase power if you will, primarily from Genco for DISCO. Should the structure of PPA charges dictate the way the costs are allocated or should we look behind the PPA structure to Genco's actual cost structure. I submit if you want to do, as you I think have to do, the most accurate job possible, you have to look behind what are the generation costs.

To a certain extent this current CCAS that NB Power is using is not internally consistent on this point. The

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allocation of Genco's fuel costs is based strictly on the PPA structure. But the allocation of Genco's fixed costs and the treatment of Nuclearco's costs looks behind the PPA. We know the fuel costs of energy production is much higher in the winter than the summer. This is just an example of some of the issues that really you have to question whether costs are being properly allocated. We know from the evidence that the at least January and August comparison of fuel costs for energy generation are substantially higher, in fact about two times higher in the winter than in the summer, but yet the cost for the purposes of allocating costs between classes, the CCAS, uses the PPA structure. And this PPA structure for allocating costs says each class will be charged at the same flat rate or at a levelized rate. Well that's a misconception, because there are some of those classes that use much more heat -- much more energy, I'm sorry -- in electricity in the winter time. So they are using in fact a much higher cost to generate electricity but yet being charged for cost allocation purposes at a lower rate than their actual cost. They are using a levelized rate. And Mr. Larlee would indicate that perhaps there has been some consideration given by that because demand

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2 charges are disproportionately -- my term, not his --
3 allocated to the class -- the residential class for
4 example, who are one of the groups -- wholesale and
5 residential are some of the larger groups that have winter
6 peaking. I would suggest though if we take a look at some
7 figures -- and I won't bore you with the details, but if
8 you look at some of the figures -- I did a quick
9 calculation and I refer you to page 3 of CME-1, Mr.
10 Drazen's report, where he refers to some statistics, and
11 in those statistics it cites the energy costs and
12 separates them from the demand costs.
13 Then use the figures from the statistics that were given,
14 some of the various statistics given in the PROMOD in
15 attachment number 2, schedule 1.1, as to the total
16 generation of power in the year, he did a quick
17 calculation and said, all right, we have a little less
18 than 15 million megawatt hours in the year forecast, and
19 our costs are forecast at about \$800 million in energy, if
20 my memory serves me correctly -- I have them here but I
21 won't bore you with them -- and \$150 million in demand.
22 Do a quick calculation. The average demand cost is about
23 \$10 a megawatt hour. The energy cost on the other hand is
24 \$58.
25 Even if you assumed all of the demand costs are being

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absorbed by the customers like the residential or winter peaking customers, then -- which they aren't because some of those are being absorbed by other classes as well, but even if you assume it, that \$10 is completely inadequate to adjust for the fact that in the winter time those customers are consuming twice as much -- power to cost, quote unquote, twice as much.

So again this is not a scientific analysis, this is not a CARD hearing. It's merely designed to point out to the Board that there is clearly evidence before you that says the cost allocation needs to be reviewed.

I do want to address the issue of timing and this small jurisdictional issue. We recognize that it would appear from the Board's September 27th comments, and I think otherwise, that there is no real appetite for a CARD hearing sort of immediately following this and before any decision is given.

And so to be honest with you, we have tried to apply some imaginative approach to figure out how a fair CARD cost allocation component can be used by this Board for this decision. And also, and I think at least equally importantly is to ensure that any future rate increases which could indeed evolve, and in fact from we understand from the press would likely hopefully very much involve no

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rate application hearing for at least a couple of years.

What we don't want to see of course is perpetuating any inappropriate allocation of costs or any decision based on inappropriate allocation of costs to the various classes, not only applying in this case but applying for any subsequent rate increases before a rate application is actually heard by this Board again, which could be two years, it could be more than two years.

We don't pretend that there isn't this jurisdictional issue. There is a jurisdictional issue. And I alluded to it previously. I think everybody recognizes the difficulty with the current legislation. When can you have it.

Our suggestion is that this hearing, there should be sort of a breather period and that the Board should order -- I will call it conditional -- a conditional rate increase with respect to this matter, rather than an interim one again, but I think it's almost a manner of semantics. And that the Board order that within a six month period there would be a CARD hearing, and we would acknowledge that unless there is a -- I will call it a significant change in cost allocation, that the Board's decision that would be conditional would become permanent.

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2 In other words, if the CARD results in a reallocation of
3 costs between classes, that is not so fundamental that it
4 requires going back to revisit this, then the Board
5 decision could be upheld.

6 But that if in fact the Board hears the CARD, determines
7 there are significant cost shifts, that they then decide
8 whether something has to be done about it as a result.

9 There is no question this complicates it for DISCO. I
10 guess we balance that against the complication against our
11 clients and all the other customers of DISCO if a decision
12 is being made and are being made -- decisions are being
13 made in the future with the wrong classes being allocated
14 costs.

15 There was this issue about perhaps wait until whatever
16 shake-out might occur as a result of the government's
17 intended review of NB Power structure. The thought on our
18 part for six months, to be honest with you, is that
19 probably within six months one would have a good idea, if
20 not legislatively imposed or directed change, but a good
21 idea of what the new structure would be, and can therefore
22 use whatever impact that is going to have in the forecast
23 as a result of the CARD. If that's not right then the
24 Board could then revisit the issue at the time of whether

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or not there would have to be a further pushing out of this.

But again, we would urge the Board to recognize firstly that there are shortcomings in the current cost allocation, the shortcomings having been identified by the Board, the PUB itself, in 2005 when it rendered its decision in the first place.

So those are my points with respect to the motion. I guess the good news is I don't have as much to say about the other.

On the question of the rate increase application itself, with respect to -- I don't want in our absence of address certain issues to be interpreted as an acceptance of all that DISCO has presented. As a result I start with, on the revenue requirement components, I am going to defer to the Public Intervenor on the points he has raised with the exception of one which I will raise, he may raise as well.

So I'm not by not addressing it saying I'm okay with all that -- we are okay with all that DISCO has said but would defer to the Public Intervenor on most of the issues that were addressed.

On the issue -- the one issue that we do want to talk about in some specifics is the PDVSA settlement. And more

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specifically the \$47 million question. Even by DISCO's

standards \$47 million is a lot of money, and as a result it's worth fighting over.

And I would say the shareholder of DISCO, the ultimate shareholder of DISCO, thinks it's worth -- it's a lot of money and thought it was worth fighting over and therefore took the money. We are of the belief that in fairness -- and that's what this hearing is about, fairness and equity. I think Mr. Morrison used those terms, fairness and equity.

One of the things that you have to look at quite simply is that what of this \$47 million? Our position is that the claim, damages, proceeds whatever he calls it, the claim that was made was for \$2.2 billion in lost savings that would have been incurred by the DISCO customers. So that -- DISCO customers would have received the benefit of \$2.2 billion.

I can't see any reason why a party who has some claim to some of that money gets the first \$47 million at 100 percent of their losses, and DISCO gets everything else that's left over. It would be our view that the fair way of doing this is saying, look, you folks as shareholders suffered \$47 million in loss, we as ratepayers suffered by the figures that were outlined in evidence, \$2.2 billion

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in loss, no details provided, but it was told that the \$2.2 billion was a calculated number representing the savings that were lost as a result of the loss of the contract. So therefore a proportionate sharing of that should take place. Quick math says that's about \$7 million that would go to the shareholder, the Province, and \$40 million that would go to the DISCO customers. And we submit that the \$40 million ideally would go this year. It is not associated with particular capital loss cost, so it's a different issue than the spreading it over 17 year issue that arose with respect to the deferral account. Perhaps it may be more equitable to take that \$40 million and spread it over a short period of time, I would suggest maybe two, three, four, maximum five years, rather than the 17 year period if the Board thinks that the spreading of it ought to take place in some fashion. In either case, it has a significant impact on the rate application and the revenue requirements of the Board -- sorry -- of NB Power DISCO. Now that's not to say that I don't hold in high regard Mr. Strunk's view that it all should go to DISCO, but I guess we would say that maybe a fairer allocation would be

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the \$7 million to the Province.

So moving lastly to the issue of the revenue to cost ratio and the rate increase application generally. I think Mr. Morrison very clearly succinctly put the point forward that what we are saying, and that quite simply is that the CARD decision, the foundation on which this application is being made, is as far as we are concerned, not solid.

There is an inappropriate allocation of costs, particularly to the large industrial class, and that's the reason why we have brought the motion that we have.

But in the interim period, in the decision making by this Board, it has to decide what is appropriate. And -- or even if it doesn't order a CARD, it has to decide what rate increase is appropriate.

Well Mr. Drazen's evidence, again not cross examined on the subject, was that with the reallocation of costs as he believes to be appropriate, there would be a .97 revenue to cost ratio with a 6.4 percent increase, the average increase that is being sought.

We don't think that the Board can -- and again Mr. Drazen's evidence is not a comprehensive CCAS clearly, but it shows the confidence or the absence of confidence the Board can have in the allocation of costs, and therefore

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we submit the Board cannot rely on this .95 to 105 and the large industrials being at .92, as the evidence indicates, because we don't believe that indeed is the case. We believe it is within that band and so we would urge the Board to be considerate of that issue when deciding what is appropriate for large industrial.

There is an inclination to say, well look, it's 6.4, 7.4, it's only one percent. Well we are playing a pretty high stakes game of poker here, as you can appreciate. This is not my average weekly allowance from my wife kind of numbers we are talking about here.

One percent is a very substantial amount of money, very substantial for a class, very substantial for the customers within the class. And as a result, we would urge the Board to give consideration to that and we are cognizant of the fact that we are talking a lot of money.

We can't also lose site of the fact that we heard stories, we all read the newspaper, about what has happened to the large industrial class. I'm not for a minute here telling you that that's -- the bad things that have happened in the last recent time have all been energy related. I'm not that stupid. I will grant some stupidity but not that stupid.

But I don't think anybody can say that it had nothing

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to do with energy costs. There are a lot of forces acting right now against the large industrial class in this province and it's very real. DISCO is going to have to contend with that.

Two very large -- large industrial customers have within the span of the time of this hearing either closed down or announced they are closing down permanently. And they are big customers. Now that's going to have an impact.

One of the impacts it has in the short term is DISCO, as counter-intuitive as Mr. Larlee said, in fact may be a little better off in the test year as a result, because they stop using the power, supplying the power, but those customers have to pay the fixed demand charge.

So they are actually going to be to the good, I think the evidence was in the amount of three or \$400,000 a month in each of the respective months for each of the two customers.

As well, and this one -- I have no idea what the explanation is, and that's why I need a CARD to recognize it, but he also indicated that as a result of these two changes it would likely have, and his terms were, upward pressure on the revenue to cost ratio for the large industrial class.

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2 So the taking out of two very large customers in some
3 fashion, beyond me, would likely put upward pressure or
4 increase the amount of the revenue to cost ratio for the
5 large industrial class.

6 At the public session I understand, I have read the
7 transcripts of some of that, and I understand that Mr.
8 Cronk, regional Vice President of the union that
9 represents a large number of people in the forest products
10 business of which a large part of the large industrial
11 customers are, has pleaded with the Board to be cognizant
12 of the impact that high energy costs are going to have
13 along with the other variables, and we would urge the same
14 thing.

15 Barry Gallant, Flakeboard, similarly indicated that there
16 is a concern and indicated, interestingly enough, that in
17 New Brunswick their costs for electricity are 20 percent
18 higher than the average costs that they have in their --
19 their average costs for their entire eight mills.

20 So that I think Mr. Barnett had indicated came as a
21 surprise to him -- somebody did at least in the course of
22 questioning, and it came as a surprise to me. But that I
23 guess is the reality.

24 So we would, in conclusion, urge the Board to minimize to
25 the extent it thinks possible the rate increase for the

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revenue requirement for DISCO. We would also again reiterate that the Board can't, we don't think, rely with confidence on the -- entire confidence -- on the CARD, the cost allocation piece of the CARD, that's before them from the 2005 decision.

And we would urge that the large industrial class would not receive an increase any larger than the average rate increase. And that being said, it should not be understood that the large industrial class takes kindly to the idea of a 6.4 percent increase, for example.

That will have a very profound effect on business, without any doubt about it, it will have a very profound effect on business.

But to be honest with you, we didn't think realistically you would probably give us any less than that, so we didn't plead for it. So don't interpret large industrial's acknowledgement to give us the same as everybody else on the average as being an acceptance of 6.4 as palatable. It really isn't. And I'm sure you understand that because we all read the newspapers.

That being said we would like to thank the Board for hearing us. If there are any questions, we would do that, but before so, I would like to commend the Board and all the other participants on a very good hearing.

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CHAIRMAN: Thank you, Mr. Lawson. I do have a couple of questions for you.

If the rate increase for the large industrial were to reflect the average increase as it currently stands, and in the event that the revenue requirement is accepted by the Board, would that not have an effect of actually pushing upwards the average increase? I'm wondering if you have looked at what that -- what the resulting average increase might be.

MR. LAWSON: I have to admit, Mr. Chairman, I have not done that analysis. But I would say that there would be plenty of money to go around with the \$40 million that is available under PDVSA.

CHAIRMAN: I appreciate that. But all other things being equal, if one class were to pay less, normally that would mean that another class would pay more. And particularly if in fact what your target was was to get -- you know, all other things being equal, to get to the 6.4, it would probably mean that somebody else would end up paying a larger amount.

And I'm just wondering if you had done any calculations on that?

MR. LAWSON: No, Mr. Chairman. We haven't done any calculations. But I think the calculations, ironically

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2 and unfortunately, have to be done in the context that 40
3 percent of the large industrial customers, as we
4 understand it, are no longer going to be customers when
5 this decision is in place, by the loss of UPM and
6 Dalhousie.

7 So the actual impact would not be as significant as what
8 it would otherwise have been if operations were continuing
9 as they were. But that being said, I have not done the
10 analysis. And I will profess I don't have the capacity to
11 do so.

12 CHAIRMAN: With respect to a cost allocation hearing, your
13 motion of November the 23rd asked the Board immediately
14 following the current hearing to hold a hearing with
15 respect to cost allocation.

16 And I guess when I initially read that motion I looked at
17 it as something separate and apart from this hearing.
18 Do I understand I guess what your current position is,
19 that whatever decision this Board would render would be an
20 interim decision rather than a final decision in order to
21 retain jurisdiction?

22 MR. LAWSON: Mr. Chairman, I think it is a legal nuance we
23 have to get around. Because I do believe that there is a
24 jurisdictional issue. And I think that is precisely what
25 we have to advance.

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2 I call it for this purpose conditional increase. Interim
3 is another way of describing it. But conditional
4 increase, conditional upon the outcome, not of the CARD,
5 not having a significant impact.

6 And what is significant -- I recognize the cumbersomeness
7 -- more than cumbersomeness -- the difficulties DISCO
8 would suffer as a result of having it conditional.

9 But yes, it is -- we would very much like to have, and we
10 think it very much appropriate, to have that CARD, a CARD
11 and its outcome impact on the decision of this Board in
12 this application.

13 We recognize though the practicalities of that and
14 therefore are trying to find some way within this
15 jurisdictional context of still having a CARD, still
16 having it have some impact, but letting a decision be made
17 that would probably, but not with certainty, be permanent.

18 CHAIRMAN: Timing becomes obviously an issue. And there are
19 a lot of timing issues, perhaps not the least of which is
20 the timing of the request.

21 I recall that this issue was canvassed during one of the
22 pre-hearing motions. I believe it was in late September
23 or sometime in October. We were down at the Hilton Hotel,
24 in any event, when that issue was canvassed.

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And if my recollection is correct, and please correct me if I'm wrong, it seems to me there wasn't much appetite in the room for a cost allocation study, you know, at that time. I think virtually all of the parties, you know, were asked.

And I'm not suggesting that everybody said absolutely no to the question. I just don't know that anybody put forward a position other than one that might have been premised on different jurisdiction for the Board, that is by way of perhaps a generic hearing sometime after this matter was concluded.

Is my recollection of that correct, Mr. Lawson? Or do you recall it as being somewhat different than that?

MR. LAWSON: Beauty is in the eyes of the beholder, I guess.

My recollection was, and it is obviously subject to check, would be that most, but not all, of the parties were of the view that there was a need for a cost allocation review.

I do recall that at least one of the parties did address the issue of we don't want to have one to the extent it is going to interfere with this rate application.

I don't recall if any of the others who addressed the issue of the timing, to be honest, Mr. Chairman. But I

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2 think you did.

3 CHAIRMAN: I don't have any further questions, Mr. Lawson.

4 Mr. Barnett?

5 MR. BARNETT: Mr. Lawson, I just want to be clear. If we
6 could get around the jurisdictional question -- and maybe
7 you have already answered this question in response to the
8 Chairman. And there was a cost allocation rate design
9 hearing. And you used the word "conditional".

10 Would it carry implications for this current rate
11 application? Or would it be on a go-forward basis, would
12 you see that, for a future rate application?

13 MR. LAWSON: The reason I call it conditional, I guess I
14 would draw an analogy perhaps to the hydro issue that they
15 use under the Genco/DISCO issue.

16 If it is outside a band that the Board might set, that the
17 Board might go back and change its decision from this set
18 of hearings, but if it isn't outside of a certain band
19 that perhaps the Board might set, then that decision would
20 remain in effect. A novel approach.

21 Another approach which is not as acceptable to us -- in
22 fact I just want to see if I get kicked by Mr. Plante when
23 I say this. The problem is I will have said it.

24 CHAIRMAN: You may want to consult with him first.

25 MR. LAWSON: Yes. Maybe that is a good idea.

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I must commend you, Mr. Chairman, on some good advice.
I'm not going to say anything more.

CHAIRMAN: That is the last legal advice you are going to
get from here.

MR. LAWSON: Last legal advice or good advice? Sorry, I
missed that.

CHAIRMAN: Any other questions from the Board?
Mr. Johnston?

VICE CHAIRMAN: Mr. Lawson, you raised the issue of
proportionality with respect to the benefits flowing from
the PDVSA settlement. And you have suggested in our
argument that we use the \$2.2 billion figure. There has
been a suggestion, I think maybe even argument, that that
was sort of pie-in-the-sky lawyer talk.
It occurs to me that if we were to decide to go down this
road of accepting this proportionality argument that there
might be other alternatives, the alternative claim which
was pleaded for \$559 million. And then there has been
some discussion with respect to the costs of the Coleson
Cove refurbishments.

I'm just wondering, if the Board were to accept that
proportionality was the right way to go on this issue, but
was not to think that the \$2.2 billion was the appropriate
measuring stick, do you have any comments on what would be

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2 the best other way to approach that issue?

3 MR. MORRISON: Just before we --

4 VICE CHAIRMAN: I'm sorry.

5 MR. MORRISON: -- Mr. Lawson addresses that, I would just
6 caution him to be cognizant of much of these figures were
7 in the in-camera hearing. And I know that for example the
8 \$702 million figure is out there. But if we drill down
9 into some more of that -- if he could couch his response
10 in such a way that we don't have to have an in-camera
11 argument, I think it would be to the benefit of all.

12 MR. LAWSON: I can certainly do that. I do not believe that
13 anything other than the \$2.2 billion is an appropriate
14 figure. It might have been a pie-in-the-sky calculation.
15 But it was, by the evidence, it is the only evidence that we
16 have with respect -- that has any certainty with respect
17 to the issue of the total loss future savings to be
18 accomplished by the Orimulsion deal.

19 It came from DISCO -- or NB Power, I apologize -- and was
20 told that it was, although we didn't have the details, it
21 came from a detailed calculation of that amount.

22 So I don't think anything different than that should be
23 used. Leaving numbers aside, so as not to tread into the
24 wrong waters, if there was going to be some consideration
25 of the numbers -- I really have some

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2 difficulty with the idea that it can only get attached to the

3 idea that it is on the actual out-of-pocket losses or

4 money spent, that was spent by Genco for the conversion.

5 To be honest with you, you have been a lawyer. You know

6 when you make these kinds of claims you don't claim for

7 the small amount. You claim for the big amount.

8 In fact in -- there were two proceedings. And my

9 understanding of the evidence was in one of the two

10 proceedings related to this claim --

11 MR. MORRISON: Mr. Chairman, I would really ask Mr. Lawson

12 to be very cautious about how far down this road it goes.

13 Or we can go in-camera and do the argument in-camera. I

14 have no problem with that.

15 VICE CHAIRMAN: I apologize, Mr. Morrison. I wasn't trying

16 to steer him into anything in-camera. It just does seem

17 to me that this is an issue that was raised.

18 Maybe if you just want to try and say the generalities,

19 Mr. Lawson?

20 MR. LAWSON: I think it is correct that there was -- I think

21 I read it in the paper about the nature of these claims.

22 So I don't think this is getting into confidential

23 territory. But what the nature of the claim is --

24 CHAIRMAN: Mr. Lawson, I'm just going to suggest that just

25 in case there is -- you are incorrect about where you saw

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2 the numbers and what not, if you just try to keep your
3 comments as general as possible without using any figures.
4 Perhaps that would be useful.

5 MR. LAWSON: I wasn't going to use figures. My only comment
6 is that I'm not so sure that anything other than the 2
7 point -- I know the \$2.2 billion claim was consistent in
8 both matters, claims.

9 VICE CHAIRMAN: Thank you.

10 MR. MORRISON: And just for the record, Mr. Chairman, I
11 would like to put on the record that the terms pie-in-the-
12 sky claim were not uttered by DISCO and were not put
13 forward by DISCO.

14 VICE CHAIRMAN: I do apologize, Mr. Morrison. I didn't mean
15 to suggest that that was verbatim. I may have exaggerated
16 the context of some of the arguments that were advanced.

17 CHAIRMAN: Well, thank you, Mr. Lawson. I think that the
18 Board will take a recess now. It is almost 10 after
19 12:00. So we will return at 1:10.

20 (Recess - 12:10 p.m. - 1:10 p.m.)

21 CHAIRMAN: Good afternoon. Mr. Kidd, are you ready to
22 proceed?

23 MR. KIDD: Yes, I am, Mr. Chair. Good afternoon, Mr. Chair,
24 and other members of the Board. Mr. Coon sends his
25 regrets for being unable to attend today.

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2 Before I begin my argument, I want to thank on behalf of
3 the Conservation Council of New Brunswick, the
4 representatives of the Applicant, Board staff, the Public
5 Intervenor and other intervenors, for giving me their time
6 and advice throughout this hearing. This assistance
7 helped me to develop lines of cross examination and this
8 closing argument. That being said, any errors or
9 omissions are entirely my own doing.

10 The Conservation Council of New Brunswick is asking the
11 Board in deciding upon DISCO's rate application for the
12 following three things.

13 One, to deny DISCO a portion of its requested revenue
14 requirement for its failure to implement and deliver an
15 effective demand side management program.

16 Two, that the Board take jurisdiction over DISCO's
17 integrated resource planning efforts to ensure that demand
18 side management and other energy saving measures are given
19 proper consideration by DISCO.

20 And three, to order the immediate elimination of the
21 declining block rate for residential customers, and, if it
22 is not prepared to do so, an order that that would see the
23 time period for limiting the declining block rate
24 shortened significantly.

25 I will address each of these items in turn in my

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argument, as well as a fourth issue, and that being whether a new hearing regarding DISCO's customer cost allocation study methodology should take place in the near future. Before I continue, I don't want the above to be taken that the Conservation Council agrees with the remainder of DISCO's stated revenue requirement, but rather just takes no position, leaving arguments regarding the reasonableness of other aspects of DISCO's revenue requirement to other intervenors.

So dealing with my first point, which is the denial of a portion of DISCO's requested revenue requirement. Like others, I have read the transcript from last Thursday's public comment session and, like the Members of the Board, I found many of the presentations very compelling.

The bottom line for everyone, from those living in poverty to New Brunswick's large industries, are that increases in electricity rates make life more difficult and in some cases extremely difficult.

This has been exacerbated by the large rate increases that have been introduced in the past several years, which the applicant's present request for a 6.4 percent rate increase is a continuation of. Obviously keeping electricity rate increases in check would be beneficial to

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all ratepayers for a variety of reasons.

At the same time, it is fair to expect, except when reasons of social justice dictate otherwise, that New Brunswick ratepayers pay their fair share of the cost for the electricity they consume. Clearly then the question is how do we keep the cost of generating, transmitting and distributing electricity to a minimum so that each ratepayer's fair share does not become an overwhelming burden. One way, and the reason for the present hearing, is to ensure the expenses underlying DISCO's revenue requirement are reasonable and prudent.

It is the Conservation Council's position that DISCO's failure to develop and deliver an effective demand side management, or DSM program, has resulted in its 2007/08 revenue requirement being larger than it needs to be. As such, it is requesting the Board deny DISCO a portion of its revenue requirement in an amount of approximately \$6 million. CCNB believes the following points that I am about to make support its position.

Before I get into those points, I would like to make it clear that when I use the term demand side management, I am including in it all of the programs DISCO could initiate to reduce its customer load requirements. This includes the promotion of energy efficiency

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programs, offering incentives for customers to switch home heating fuels, and load shaping options DISCO could pursue such as offering time of use rates.

I believe it is fair to include all of these matters under the title of DSM as in the end they all achieve the same thing, which is a reduction in DISCO's customer load requirements. As Mr. Larlee noted, DISCO itself, quote, "blurs the lines", end quote, when talking about DSM and energy efficiency, and that for DISCO DSM is both demand control and energy efficiency.

And that can be found at pages 1494 and 1495 of the transcript from Monday, December 3rd. And to demand control energy efficiency the Conservation Counsel would also add fuel switching.

Returning to my argument, I am quoting from DISCO's evidence, approximately 80 percent of DISCO's revenue requirement for 2007 and '08 is for purchased power to meet customer load requirements. Underlying fuel costs and capacity related -- capacity related costs prescribed in the PPAs, make up the majority of this 80 percent.

Both of these costs are rising and are one of the major drivers of DISCO's requested rate increase. As such, the obvious way for DISCO to offset the increase in these costs in its revenue requirement, is to have a lower

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2 load requirement.

3 If A times B equals C, and then A gets bigger, the only
4 way for C to remain the same is for obviously B to get
5 smaller. DISCO accepts the legitimacy of this argument
6 for in response to a question posed by CCNB, Mr. Kennedy
7 agreed that if DISCO had a lower load requirement, its
8 revenue requirements for purchased power would also be
9 lower. This can be found at page 1116 of the transcript.

10 From the evidence presented it appears DISCO has little
11 control over the price it pays for fuel and capacity
12 charges. The one thing DISCO, as an electric utility,
13 could exert some influence over is its load requirements.

14 In other jurisdictions, electric utilities have achieved
15 this by developing and delivering demand side management
16 programs.

17 Through its evidence and testimony DISCO has made it clear
18 that other than its energy advisor program, it has given
19 little recent attention to the implementing of DSM
20 programs. And I have four points.

21 For example, number 1, in response to an IR number 72 from
22 the NBEUB DISCO responded, quote, "NB Power was one of the
23 many utilities that eliminated their DSM programs in the
24 late '90s." End quote. Mr. Kennedy confirmed this when
25 he responded to a question from CCNB stating that

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DISCO did not have any DSM programs in place between 2000 and 2005. And that's at page 1124 and '25 of the transcript.

In answer to a similar question, Mr. Larlee stated, quote, "Well we don't have any active programs." End quote. And that's found at page 1491.

Point number 2, setting aside for now the issue of the delivery of actual energy efficiency programs for DISCO, and that's a point I'm going to come to later, it is clear DSM matters remain under the control of DISCO and that DISCO accepts this is so. And you can see this at page 1494 and 1495 of the transcript.

The problem is that DISCO has taken the position that DSM measures are only to be considered when it examines what additional capacity is required to meet future load requirements or demands. It does not seem to appreciate that DSM measures could be implemented today to lower its present load requirements.

Its view on DSM is also at odds with the June 19th 2006 decision of the then PUB. In that decision at page 31 the then PUB stated, quote, "Energy efficiency refers to the efficient use of energy by consumers. Demand Side Management refers to energy conservation and load shape modifying activities that are undertaken in response to a

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utility administered program. It includes the planning, implementation and monitoring of a utility's activities designed to encourage consumers to modify their patterns of energy usage, including the timing and level of electricity demand. It does not refer to energy and load shape changes arising from the normal operation of the marketplace or from government mandated energy efficiency standards." End quote.

I would like to point out that this definition makes no mention of the idea that DSM measures are to be used only offset an electric utility's future capacity requirement. Number 3. Even though DISCO is working closely, quote, with Efficiency New Brunswick, DISCO could not provide information on the impact the agency's energy efficiency programs would have on reducing ratepayers' electricity needs. And I see that I took that from exhibit A-4, appendix F, which was a load forecast, on page 2.

I further note that my recent electricity bill from NB Power makes no mention of Efficiency New Brunswick or its programs.

Number 4. Other than increasing rates, DISCO is doing little to discourage the continual increase in annual

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household electricity usage. And that comes from page 1493 and 94 of the transcript.

Throughout this hearing the Conservation Council has focused on questions that deal with the issue of Disco implementing programs specifically aimed at reducing the use of electric heat by residential customers. It is important to remember that the residential space heating load is a significant portion of DISCO's overall load requirements.

Therefore, putting aside all the environmental difficulties posed by the profligate use of electric baseboard heating in New Brunswick, there are still compelling economic reasons why DISCO should have taken steps beyond increasing rates to lower the present space heating load. To put it plainly, it is expensive to produce the electricity to meet the demand of DISCO's electric heat residential customers.

As Mr. Hay stated, the high use of electric heat requires that the base load and other wires be heavier, which makes the system more expensive to operate. And that can be found at page 1045 of the transcript.

As well he noted that space heating units are not that efficient. To supply the electric heating load requires that more electricity be produced in the winter, which but

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for the vesting price would be more expensive to produce.

Raising rates and eliminating the declining block rate are only partial responses to the question of how DISCO can lower its electric space heating load or residential load in general. It is unclear how effective raising rates are in lowering electric consumption. As Mr. Larlee stated, when residential customers see increases in rates they initially take steps to lower their energy consumption. However he described this as a knee jerk reaction and then, quote, "people get used to their power bills again and return to their sort of normal status quo behaviour."

End quote.

Clearly people need other incentives to lower their electricity consumption such as those offered through demand side management programs.

So what are the financial impacts of DISCO's failure to implement an effective DSM program?

Let us say that DISCO is able to achieve a one percent reduction in the amount of electricity required by its residential customers through a DSM program, and this one percent reduction was something that Mr. Larlee agreed was a reasonable target for electric utility DSM programs.

And that can be found at page 1489 to '91 of the transcript.

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Let us further assume that this reduction was the result of lower demand for residential electric heat, which again is DISCO's most expensive electricity to produce. I am going to off in some numbers here and I will try to do so slowly.

In its load forecast DISCO predicts that residential customers will consume 5,152 gigawatt hours or 5.152 million megawatt hours of electricity in 2007/08. So one percent of this would be 51,520 megawatts.

In the same load forecast it predicts peak demand for all of DISCO to be 3,229 megawatts. DISCO allocates approximately 52.5 percent of this demand to residential customers. Therefore, DISCO's residential customers have a firm demand load of approximately 1,695 megawatts, one percent of which is 16.95 megawatts.

So when we turn to table 1(B) of the purchased power expense for Genco, you have basically 44,000 megawatt hours at \$48.92, which is the prescribed fuel component, for a total of 2.1 million. And this is less than the 51,000 I had mentioned earlier, is I take away the 7,500, for megawatts that are supplied by CT and emergency generation.

The cost of supplying CT and emergency generation is 1.4 million. There is also contribution to fixed costs

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2 which is table 1(F), and that's 51,000 megawatt hours times
3 \$7.45, it's \$383,000, plus a contribution to capacity
4 payments, and that's -- if you take 16.95 megawatts
5 multiplied by the capacity payment of \$120,000 per
6 megawatt, you come to 2 million, or approximately \$2
7 million. Add all that up, it comes to about \$6 million.
8 And I know that I have attributed all of these costs to
9 Genco basically, to the most expensive electricity
10 production. My reason for doing so is again that much of
11 this -- the CT power needs to be used in the winter, the
12 most expensive energy production is in the winter, all
13 these various things lend themselves to suggest that
14 electric heat is the most expensive to supply and
15 therefore it is appropriate to give it the highest cost
16 essentially. So again, the bottom line would be \$6
17 million.

18 While \$6 million may not seem like a lot when compared to
19 a revenue requirement of 1.3 billion, the point is the
20 failure to implement DSM programs has resulted in expenses
21 that are not prudent for DISCO to incur. As such, this
22 amount should be removed from DISCO's revenue requirement.

23 Importantly, denying DISCO this portion of its revenue
24 requirement would also send a message to the Applicant
25 that the Board takes the energy -- takes the issue of

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demand side management very seriously. So DISCO had better get to work on this matter.

It is the Conservation Council's opinion that given the heavy use of electric heat in New Brunswick, the impacts of a DSM program aimed at this class of customer would result in significantly more than a one percent reduction in its load requirement.

So other jurisdictions do not have the space heating load that New Brunswick basically, is what I am suggesting.

For example, the 59.5 percent of DISCO's residential customers who use electricity as their primary heat source, this provides lots of opportunity for the implementation of a fuel switching DSM program, such as natural gas or wood or pellet stoves.

Before concluding this part of my closing argument I would like to address the issue of what is Efficiency New Brunswick's role in DISCO's DSM efforts.

To begin, representatives of DISCO have stated several times that it is DISCO's position that it is Efficiency New Brunswick's role or mandate and not DISCO's, to deliver energy efficiency programs to DISCO's customers. DISCO's position appears to be based on the wording of the Electricity Act and the Energy Efficiency and Conservation Agency of New Brunswick Act.

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Mr. Chair, I have some excerpts from this Act. I wonder if I could distribute them at this time. I'm not sure what the procedure would be.

CHAIRMAN: Certainly.

MR. KIDD: Thank you.

As Ms. MacFarlane discussed on Tuesday, November 27th, section 2 of the Electric Power Act, which was repealed when the present Electricity Act came into force, stated, "The intent, purpose and object of this Act is to provide for the continuous supply of energy adequate for the needs and future development of the Province and to promote economy and efficiency in the generation, distribution, supply, sale and use of that power." So that's what the former mandate was.

This wording of section 2 was actually set out in 1962 and remained unchanged until the Electric Power Act was repealed. And you can see that I guess on the second page or on the back side. You can see the mandate there set out, part 2.

From my perspective -- I'm going to focus on the word "efficiency" for a second. From my perspective the inclusion of the word "efficiency", which would always suggest a environmentally friendly word, was quite forward thinking at that time, especially when you consider that

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2 Rachel Carson's book, Silent Spring, was not published until
3 1962 or '63, and it was her book that is most often
4 credited with marking the beginning of the present day
5 environmental movement.

6 So really when they put that word "efficiency", it was
7 forward thinking for the day.

8 Now coming to the present day, words such as
9 "sustainability" and "green" and "protection of the
10 environment" are all part of our lexicon. Most
11 governments and corporations purport to consider the
12 environmental impacts of their decisions. Given this, I
13 would submit that it is not surprising the word efficiency
14 has been dropped from the stated purpose of DISCO, which
15 is section 4(1)(D) of the now Electricity Act -- you have
16 to go over a couple of pages -- the word "efficiency" has
17 been removed.

18 Most governments and corporations purport to consider the
19 environmental impacts of their decisions. Given this I
20 would submit that it is not surprising the word
21 "efficiency" has been dropped from the stated purpose of
22 DISCO, with our heightened environmental awareness it is
23 understood that an electricity company, particularly a
24 publicly owned one, is supposed to act efficiently.
25 DISCO's interpretation of their mandate under the

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Electricity Act that they presented in testimony is that the missing word "efficiency" is all important to their mandate, and this suggests that for some reason the government has given DISCO the authority to see that power is distributed and used in an inefficient manner in New Brunswick. I'm sure the government would not like to see a headline that reads, "Government Tells DISCO to Act inefficiently".

It is my submission that nothing turns on the deletion of the word "efficiency" from DISCO's present mandate.

Further, I would submit that my position that DISCO does have a mandate to promote energy efficiency is supported by section 101(4)(E) of the present Electricity Act, which states that the Board may, when considering an application from DISCO take into consideration -- and this is part (E) -- energy programs instituted or planned by the Distribution Corporation.

The term "energy programs" is not defined in the Act. I would submit it is clearly broad enough a term to encompass energy efficiency and other DSM programs.

I also note that section 101(4) and much of the rest of the Electricity Act came into force on October 1st 2004, and that the Energy Efficiency and Conservation Agency of New Brunswick Act did not come into force until

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March 2006. Because the Energy Efficiency Act was not in place when the Electricity Act came into force, I believe it's fair to assume the government intended that DISCO would deliver energy efficiency and undertake DSM programs. Any other interpretation leaves a void for the undertaking of these programs.

Turning to the Energy Efficiency Act, I agree that section 4(D) states that Efficiency New Brunswick is to, quote, "act as the primary organization for the promotion of energy efficiency and conservation in the province."

However, this section does not say that Efficiency New Brunswick is to be the only promoter of energy efficiency in New Brunswick, nor do I see anything in the Act that prohibits DISCO from undertaking actual energy efficiency programs.

Further to this, DISCO representatives have made the point several times that there are differences between ratepayers and taxpayers. They have also stated that one of the intents of the restructuring of the NB Power Group of Companies and the resulting PPAs was to ensure that taxpayers were not left with stranded debt or generation assets.

In other words, that ratepayers are to bear their fair share cost of power generation, distribution, et cetera,

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in New Brunswick.

However, DISCO's position on who is responsible for the delivery of energy efficiency programs for DISCO's customers creates a situation where it is the taxpayers who support Efficiency New Brunswick who are bearing the expenses of electricity efficiency programs, while it is the ratepayers who receive the benefits of these programs.

On its face, this certainly seems at odds with the idea of protecting taxpayers from ratepayers' costs.

Given all of this I submit that a proper reading of the Electricity Act and the Energy Efficiency Act of New Brunswick shows that energy efficiency was not, quote, taken away from DISCO, and as such it is not that DISCO can't undertake and promote new energy efficiency programs, but rather that it does not want to do so.

What I find most worrisome about DISCO's reliance upon Efficiency New Brunswick is that there is no guarantee that this reliance is in the best interest of DISCO's ratepayers. Efficiency New Brunswick's mandate does not focus on DISCO's customer electricity load profile. The priority or targets of Efficiency New Brunswick's programs may not be the same as what DISCO needs to reduce its load requirements.

What DISCO needs to do is to pursue its DSM priorities

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in a strategic way. This requires that DISCO's demand side management program should investigate the potential of all DSM measures, including those focused solely on energy efficiency.

To conclude this section of my argument, the timely implementation of an effective demand side management program by DISCO in the past would have resulted in a lower revenue requirement today.

Moving forward, under the PPAs the capacity charge per megawatt of electricity is not going to decrease. As well, all indications are that the price of fossil fuel based energy sources will continue to increase. As such, lowering DISCO's customer load requirements is key to controlling its future revenue requirements. This can be achieved through an effective DSM program which DISCO's customers need to have implemented sooner rather than later.

And that leads to the Conservation Council's second request of the Board, an Energy and Utility Board order requiring DISCO to undertake further DSM studies.

Given DISCO's casual attitude towards the development and delivery of an effective DSM program, it is the Conservation Council's position that DISCO needs further direction on this issue from the Board. As such, CCNB

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makes the following recommendations. One, that the Energy Utility Board request from DISCO a demand side management strategy that encompasses measurable targets and timelines. The strategy should address greenhouse gas reduction initiatives, the renewable energy generation program, in-house DSM initiatives, and DSM initiatives for customers in all rate classes. So not just residential. The second recommendation is that the Energy and Utility Board announce in this present rate case hearing that it will conduct a DSM hearing in 2008 to provide legitimacy to provincial and DISCO commitments to greenhouse gas reductions and DSM measures.

To fulfil these recommendations, the Conservation Council requests that the Board, pursuant to Section 128(2)(B) of the Electricity Act of New Brunswick make the following order either separately or as part of its final decision regarding the present application.

And I would like to -- this is the order that the Conservation Council is requesting. Quote, That because it is in the public interest to do so, and because pursuant to section 101(4)(E) of the Electricity Act of New Brunswick energy programs instituted or planned by the Distribution Corporation is a matter subject to consideration by the New Brunswick Energy and Utilities

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2 Board, the Board, the Board shall take jurisdiction over the
3 capacity planning process, which is also known as
4 integrated resource planning, being fully reviewed by the
5 New Brunswick Distribution and Customer Service
6 Corporation. Further to this the Board orders that, (a),
7 a DSM hearing shall commence on October 13, 2008, (b), in
8 preparation for the hearing DISCO shall initiate and
9 conduct a technical conference process, with the
10 interested parties and stakeholders, to pursue an improved
11 and effective DSM program for DISCO, (c), one of the
12 outputs of the technical conference process will be the
13 writing of an integrated resource plan report by DISCO
14 that is to be filed with the Board no later than September
15 15th 2008, (d), DISCO submit draft terms of reference to
16 the integrated resource plan and report to the Board for
17 its approval of the terms of reference no later than
18 February 15th 2008, and following a 30 day period for
19 interested parties to comment on the draft terms of
20 reference, the Board shall issue the final terms of
21 reference for the integrated resource plan and report on
22 March 24th 2008. And finally (e), DISCO in preparing the
23 above draft terms of reference use as a starting point the
24 terms of reference for the 2006 Nova Scotia Power
25 Incorporated integrated resource plan report, and those

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terms of reference are set out in appendix 1 of exhibit CCNB-
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The Conservation Council believes such an order is
appropriate for many reasons. One of these is that DISCO
has done little work recently to investigate the potential
benefits of DSM programs for its ratepayers.

Another is that lowering its load requirements will result
in DISCO having lower greenhouse gas emissions, which will
result in further savings once regulations establishing
emission charges come into force.

Finally, the premise of DSM programs fits well with a
philosophy that DISCO appears to have embraced prior to
this hearing, which is that it is good to spend money
today to save money in the future. One example of this is
the repair and upgrading of the boiler water wall at the
Belledune Generation station, so that Belledune can burn a
less costly mixture o petcoke.

Another example is DISCO's line maintenance apprentice
program through which it is hoping to offset the loss of
skilled workers. Conservation Council does not question
the appropriateness of these costs, but rather simply asks
why has DISCO not considered DSM in the same light?

Whatever its reasons, DISCO's skyrocketing revenue
requirement makes it clear that DISCO should be giving its

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immediate and full attention to the issue of how it can lower its customer load requirements. It is respectfully submitted that continuing oversight by the Board on this issue is required to ensure this takes place.

Request number 3 of the Board from the Conservation Council which is the elimination of the declining block rate for residential customers.

It is the Conservation Council's position that the declining block rate for residential customers should be eliminated immediately, and that if that is not possible that the time period for eliminating the declining block rate be shortened significantly. There are three reasons for this.

First, the declining block rate is sending a price signal to residential customers that promotes the inefficient use of electricity. Two, it is creating a situation where the electric heat segment of the residential class of customers are paying less than their fair share of the cost of producing that electricity. Third, the continuing presence of the declining block rate for residential customers is getting in the way of the implementation of energy efficiency and DSM measures.

As I discussed earlier, one of the most significant ways by which DISCO can reduce its revenue requirement is

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to lower its customer load requirement. As DISCO noted in its evidence on rate design, electricity rates that do not properly reflect the cost of providing that electricity promote the inefficient use of electricity. Inefficient use of electricity results in a load requirement that is larger than necessary.

The .94 percent revenue to cost ratio for the electric heat segment at the proposed rate indicates that this class of DISCO customer will not be paying the full costs of providing that service. As such the proposed rate for electric heat residential customers will continue to encourage wasteful use of electricity. And this is a practice that DISCO should be seeking to prevent if it is truly trying to have a revenue requirement that is prudent and reasonable.

Moving to my second point on this issue, the failure of the residential electric heat segment to pay the full costs of the electricity it uses results in ratepayer and social injustice. Regarding ratepayer injustice, the continuance of the declining block rate will result in a situation where other ratepayers continue to subsidize the costs -- the use of costly and inefficient electric heat. Regarding social justice, as Mr. Peacock ably highlighted with his evidence, DISCO's wealthier

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residential customers are receiving their electricity on a lower per kilowatt hour basis than those customers who are less wealthy or use less than 1,300 kilowatt hours per month of electricity. I would ask you to see the evidence of Vibrant Communities Saint John at what they call question 9(C) for that. This is simply not fair, this discrepancy.

Finally, the continuance of the, quote, "considerable declining block rate", unquote, for residential customers means in the words of Mr. Larlee, the economics aren't right for DSM, energy and the fuel switching programs. And that comes from page 1498 of the transcript.

It is DISCO's position that these poor economics make it difficult for DISCO to put any DSM and energy efficiency programs in place for residential customers. As well, servicing the electric heat segment requires DISCO to purchase higher priced fuel and incur more PPA capacity charges.

The artificially low price of electricity established for residential customers -- residential consumers -- by the declining block rate promotes or furthers reliance upon electric baseboard heat.

As DISCO testified, the declining block rate makes electric heat more attractive to residential customers

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even though the energy costs of alternative fuels such as natural gas are cheaper.

From these two points it can be strongly argued that while the immediate removal of the declining block rate may result in some short term pain for some residential customers, it will produce long term benefits for them and other DISCO ratepayers.

Without the declining block rate individual homeowners will have incentives to use electricity more efficiently, thereby saving money, or switch to less expensive home heating fuels, perhaps with further encouragement through emergency efficiency and DSM programs offered by DISCO. Residential and other DISCO ratepayers alike will benefit from a smaller electric heat load because the costly electricity that is needed to service this load will not be required. As Mr. Peacock noted in his evidence, quote, given the relative efficiencies of modern furnaces and wood stoves, the regulators should promote a residential rate design that encourages less reliance on the provincial electric grid for domestic heating.

Now eliminating the declining block raises the issue of rate shock. The Conservation Council would like to note that in its original rate design evidence DISCO was proposing a 17.7 increase in the declining block rate. It

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is now proposing a 13.8 percent increase in the declining block rate. It is unclear to me why ratepayers cannot now bear the 17.7 percent increase at a minimum.

Further to this, in response to another IR from the EUB, IR-84, the EUB questioned the impacts of removing the declining block rate in its entirety. To this DISCO responded that electric heat customers would only experience a nine percent average increase.

In its original rate design evidence in which DISCO requested a 9.6 percent increase for the entire residential class, the average electrically heated customer would have experienced an annual increase of 10.7 percent. Why a 10.7 percent increase would not induce rate shock then, but a nine percent increase would induce rate shock now, is also unclear.

For all of the above reasons it is clear that the declining block rate needs to be and can be eliminated sooner rather than later. Of course the financial impacts of this removal would be more tolerable to those customers who make heavy use of the declining block rate if DISCO offered an effective DSM program to offset the elimination of the declining block rate.

Finally, it is the Conservation Council's view that DISCO should ultimately move to a schedule of rates that

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includes an inclining block rate for all customers. CCNB

believes an inclining block rate would promote even more efficient use of electricity in New Brunswick. However, the Conservation Council also knows you can't run before you can walk and as such it is appropriate that the focus of this hearing should be on the immediate removal of the declining block rate.

The last issue, which is a new hearing regarding DISCO's customer cost allocation study methods. As stated in a previous e-mail to the Board, the Conservation Council is not in favour of the Board holding a hearing in the near future to review DISCO's CCAS methodology.

It is the Conservation Council's position that matters regarding the allocation of costs among DISCO's customer classes were thoroughly canvassed very recently in the related PUB hearing in 2005, and that there has been little to no change in the underlying information upon which the PUB based its decision.

More particularly, as Mr. Larlee for DISCO noted, DISCO is still operating under the same PPAs as in 2005 and information on the GENCO NUGs continues to be unavailable, which was also the case in 2005. And that's from the transcript at pages 1682 and '83.

Without this information there is a good chance the

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present Board would come to the same conclusion regarding DISCO's CCAS methodology as the PUB reached in 2005. In addition, any hearing to review DISCO's CCAS methodology would require a significant investment of time and resources for all parties who participate in that hearing. As Mr. Knecht, an expert in utility cost allocation and rate design methodology testified to, he spent over 50 hours preparing for the present hearing and his services are not free.

Given that the last CCAS review, as Mr. Morrison highlighted, occurred less than two years ago, and that much of the underlying information remains the same, it would be unfair to expose ratepayers and other parties to the expense of another CCAS hearing.

Finally, it is also the Conservation Council's position that the resulting decision of the then PUB was and remains correct and fair. As such, the Conservation Council sees no need for a new hearing to review DISCO's CCAS methodology.

To conclude my arguments, the inefficient use of electricity results in harmful environmental, social and economic costs. When times are good these harmful costs often go unrecognized. Today we know that greenhouse gas emissions from electricity generation are contributing to

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global warming.

Also as Mr. Peacock testified to, encouraging inefficient use of electricity results in social inequities.

The larger rate increases seen by DISCO's customers the past few years and into the foreseeable future highlight the economic consequences and folly of a system that rewards the inefficient use of electricity.

Clearly the time has come to end our inefficient use of electricity, from residential to large industrial ratepayers.

To support this, the Conservation Council of New Brunswick requests that this Board ensure, one, that demand side management be taken seriously by DISCO, and, two, that residential customers bear their fair share of the costs of electricity generation, transmission and distribution in New Brunswick.

Unless there are any questions from the Board, that concludes my argument this afternoon.

CHAIRMAN: Thank you, Mr. Kidd. Any questions from the Board? Mr. Barnett?

MR. BARNETT: Mr. Kidd, just a question of clarification I believe. When you say immediately, you mean as part of the Board's decision in this rate case?

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MR. KIDD: Yes, I do.

MR. BARNETT: Secondly, I think the other option you laid was shortened considerably. I guess I would just like to understand what you mean by that. I believe the applicant has indicated on the path that they are on from the previous Board decision that the elimination by 2010, if my memory serves me right. So when you use the term shortened considerably, what do you mean by that?

MR. KIDD: I stand to be corrected, is it December 2010 that it has to be completed by, Mr. Morrison?

MR. MORRISON: Yes, I believe it is December 2010.

MR. KIDD: So if you cut it in half basically we are looking for June 2009, is that correct? Something around that line would be considerably.

MR. BARNETT: So you are looking at halving the time.

MR. KIDD: Yes.

MR. BARNETT: That's fine. Thank you, Mr. Kidd.

CHAIRMAN: Thank you again, Mr. Kidd, for your presentation.

MR. KIDD: Thank you, Mr. Chairman and Board, for your time today. I just have one last question. Is it appropriate now that this closing argument is concluded to e-mail it to the rest of the parties and the Board?

CHAIRMAN: Certainly. They will get it in any event by way of a copy of the transcript, but if you wish to e-mail it

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to them that will be fine.

MR. KIDD: There are just a number of references that I have on my paper or my argument that haven't shown up on the transcript. So great. Thank you.

CHAIRMAN: So I guess Enbridge Gas New Brunswick is next.

Mr. MacDougall?

MR. MACDOUGALL: Good afternoon, Mr. Chair and Board Members. And thank you for the opportunity to provide the final argument of Enbridge Gas New Brunswick in this matter.

As the Board is aware, EGNB holds the general franchise for the distribution of gas in the province of New Brunswick. And in that regard it is actively involved in matters relating to provincial energy policy, development and implementation.

Due to the impact of DISCO's embedded rate structures, EGNB felt it necessary, both in the prior CARD proceeding and rate case and in this case to intervene.

In all three of these proceedings EGNB has focused on the issues of cost allocation and rate design, particularly where they feel certain proposals have created an uncompetitive atmosphere for energy usage in the province and have sent inefficient price signals to the energy-consuming marketplace.

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2 In the last rate case EGNB focused on both the General
3 Service rates and the residential rate. Although the
4 Board's ultimate decision in the last rate case was
5 modified by government order, the GS II all-electric rate
6 was closed and other noncompetitive aspects of this rate
7 were dealt with, allowing EGNB to focus primarily on its
8 concerns with the residential rate in this proceeding.

9 In both the prior rate case and the current rate case,
10 EGNB has also raised the need for a standby rate for co-
11 generators and the requirement to ensure that go-forward
12 rate structures do not prohibit timely consideration and
13 the potential implementation of further progressive-
14 looking rate forms such as time of use rates or seasonal
15 rates. I will deal with each of these items this
16 afternoon.

17 Starting first with residential rate, EGNB believes the
18 record speaks for itself in that the concern with the
19 residential rate is the continuance of a significant
20 declining block.

21 All parties who have provided comments on this rate
22 including DISCO agree that the declining block is sending
23 the wrong price signals and must be removed. DISCO
24 however cites concerns of rate impacts and proposes
25 continued gradualism in dealing with this rate.

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2 EGNB and others have argued that the continuation of the
3 declining block will only serve to further exacerbate the
4 problems which have been caused by this rate and that now
5 is the appropriate time for this Board to eliminate the
6 declining block.

7 EGNB believes that there are two key considerations for
8 the Board in determining how to proceed with the declining
9 block.

10 (1) what are the actual impacts of elimination of the
11 declining block? And (2) what will occur if it is not
12 eliminated in this proceeding?

13 Dealing first with the actual impacts, the key evidence in
14 this regard is DISCO's response to NBEUB IR-84 which was
15 referred to by Mr. Kidd a moment ago, where DISCO was
16 asked what would be the impact on rates if the declining
17 block was eliminated in its entirety?

18 DISCO's response was that electric heat customers would
19 see approximately a 9 percent average increase. And
20 nonelectric heat customers on average would see little or
21 no change in annual cost.

22 From the response to EGNB IR-1 on October 17th DISCO
23 showed a residential customer annual impact table, using
24 the same flat energy charge, no declining block, as in its
25 response to NBEUB IR-84.

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2 This response clearly shows that the elimination of the
3 declining block has a more positive impact on the vast
4 majority of ratepayers than does DISCO's proposal.
5 Greater than 34 percent of customers see an increase of
6 less than zero percent. Greater than 48 percent of
7 customers see an increase of less than 2 percent. And
8 almost 70 percent of customers have an increase of less
9 than or equal to the average increase for the class of 6.4
10 percent. Less than 10 percent of customers see an
11 increase greater than 10 percent.

12 And as Mr. Larlee confirmed under cross examination at
13 transcript pages 1709 and 1710, these are DISCO's very
14 large customers, including large farms which the Board is
15 aware from evidence may not even appropriately be in the
16 residential class in the first place.

17 Those true residential customers seeing impacts in the 10
18 percent or greater range would be those very large
19 residential customers who we respectfully suggest would be
20 able to best respond and react to the price signal of a
21 higher electricity rate.

22 It is in fact these customers who are currently being
23 subsidized intra-class by customers who use less
24 electricity, to us somewhat of a perverse result. And we
25 refer you to transcript page 1707.

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2 EGNB clearly believes that the record in this case
3 supports elimination of the declining block as having the
4 most appropriate impact on residential customers. Not
5 only do those who use electricity the least, many of whom
6 are likely low income customers, see the smaller or
7 actually positive impacts, but those customers who for
8 many years have seen the benefit of the declining block,
9 have a larger increase.

10 For the vast majority of customers who are truly
11 residential in nature, that increase is not that extensive
12 in any event.

13 Contrast this with DISCO's application, where DISCO
14 proposes to reduce the effect of the discount in the
15 declining energy rate structure only by one-third on a
16 percentage, not absolute basis, from 21 percent to 14
17 percent, in which a 14 percent discrepancy between the
18 initial block and the declining block would still exist.

19 Here, if you look at table 4 from DISCO's revised
20 additional evidence on rate design filed on September
21 14th, you will see that only 6.9 percent of customers have
22 a rate increase of less than 2 percent, rather than the
23 48.1 percent of customers who would have a rate impact of
24 less than 2 percent if the declining block was eliminated.

25 Quite a substantial difference.

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2 Fewer customers then have an increase greater than 10
3 percent. But of course these are the customers whom the
4 elimination of the declining block is supposed to be
5 targeted, large residential energy users, including
6 businesses such as large farms.

7 The large farm issue, EGNB respectfully suggests, skews
8 the data further with respect to rate impacts in the true
9 residential class.

10 EGNB submits it is clear that not only does the proposal
11 to eliminate the declining block send a more appropriate
12 price signal, but it benefits those customers who should
13 most benefit. And it does not unduly impact large
14 customers who would be most able to respond to the price
15 signal being sent.

16 DISCO's approach in contrast does little by way of sending
17 a price signal to those customers who are most availing
18 themselves of the declining block and are being subsidized
19 by other customers intra-class.

20 DISCO seems to be making the argument that inappropriate
21 rate impacts occur when one customer in a class sees a
22 certain percentage impact different from the average
23 impact.

24 But of course this is a natural outcome when one removes
25 an anomaly such as the declining block. Those

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parties who have for years benefited from the declining block see a larger increase.

EGNB respectfully submits that this does not suggest that the increase is inappropriate. In fact elimination of the declining block would send the correct price signal without impacting very many customers at a high rate level in any event.

As was demonstrated on cross examination of Mr. Larlee, from an absolute perspective as opposed to comparison to the average increase, elimination of the declining block has a less significant impact on customers than DISCO's own original rate design proposal prior to its receipt of the PDVSA settlement.

In this regard we draw the Board's attention to Table 4 in the original additional evidence on rate design filed on July 3rd, where greater than 33 percent of DISCO's residential customers were proposed to see an increase above the average increase of 9.6 percent.

Mr. Chair, Board members, to be clear, EGNB understands that rate impacts are an important consideration in rate design.

However it is only one of various principles of rate design and must be looked at in the overall context of a rate application and the absolute, actual absolute impact

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on the energy costs of the customers in question.

The evidence in this proceeding is clear that the rate that sends the best price signal to the customers and which in fact benefits a large number of the customers who have not had the benefit of the declining block, is the appropriate rate design looking at the impacts as a whole, elimination of the declining block.

Mr. Larlee confirmed on cross examination that DISCO made no changes to its rate design philosophy between the filing of its original rate design evidence and its revised rate design evidence.

As was also discussed with Mr. Larlee at the transcript pages 694 and 695 and was laid out in DISCO's revised rate design evidence on pages 8 and 9, Bonbright's primary criteria of a sound rate structure encompassed three specific criteria.

One of the primary criteria which is particularly important to this issue is the optimum use or customer rationing objective under which rates are designed to discourage the wasteful use of public utility service while promoting all use that is economically justified.

A declining block does the in fact opposite. As such it is, in EGNB's respectful submission, totally contrary to one of Bonbright's primary criteria of a sound rate

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structure.

Although gradualism or stability of the rates themselves is one of Bonbright's eight criteria, it is not a primary criteria. EGNB respectfully submits that this is correct and that the issue of gradualism is one which is meant to otherwise temper the primary criteria of the sound rate structure if and only if there is an unwarranted effect. In this case EGNB respectfully suggests that the evidence shows that there is not.

Mr. Larlee appeared in cross examination to suggest that the three primary criteria subsume all of Bonbright's eight criteria. And he eventually referred to a line in Bonbright's text which suggests that other criteria are ancillary to the primary criteria.

EGNB respectfully submits that the ancillary 2 means exactly what it says and that a full reading of Bonbright's discussion of his rate design criteria make it clear that three are primary and other are ancillary. Further the issue of gradualism seems to be subjective from DISCO's point of view and subject to change given the particulars of their revenue request.

With respect to the elimination of the declining block, if the Board has any concerns with the rate impact on DISCO's largest residential class customers, eg. the

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firms, it would certainly be open to the Board to temper the increase by phasing or otherwise for only those specific customers having a certain large threshold electricity usage.

Unfortunately DISCO's go-slow approach seems to be a continuation of their approach for many years including in the last rate case.

If DISCO truly believes, as they say repeatedly, that the declining block sends an incorrect price signal, then they should be walking the walk and not just talking the talk.

Now let's look at what happens if we don't have elimination of the declining block. In their response to EGNB IR-4 on September 10, DISCO stated it has no specific plans to implement rate changes other than those proposed in this rate case.

They then cited the December 21, 2005 CARD decision which noted that removal of the declining block must be completed within five years of the date of the CARD decision.

Then in response to EGNB IR-3 on October 10, they stated that they intended to comply with the CARD ruling and eliminate the declining block by no later than December 21, 2010. And since the removal of the declining

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block is an intra-class rate design change, it could be accomplished without DISCO coming back to the Board. And they relied on section 91(9) of the Electricity Act, where they do not have to come back to the Board if a change in rates does not exceed the greater of 3 percent or the percentage change in the average consumer price index.

In this situation DISCO would be making changes subject to its own discretion as to both timing and amount without Board involvement.

As DISCO says at the end of its response to EGNB IR-3 on October 10, "The dates in which each step will be implemented will also depend on DISCO's overall revenue requirements in each of the fiscal year and future EUB orders. As such it remains unclear as to how or when the declining block would be implemented. And DISCO may seek to extend or delay the time for such implementation depending on DISCO's overall revenue requirements."

As the Board will recall, DISCO themselves earlier this year had applied during the motions to extend the time frame in which they wished to deal with the declining block by a year. So DISCO has already made that application to this Board.

Keeping in mind the appropriate overall impacts on

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rate design created by elimination of the declining block,
EGNB believes that there is no reason for further delay
and that this is supported by the evidence.

In regard to the issue of delay, EGNB would note that the
2005 CARD ruling was meant to ensure at least a one-third
reduction in the declining block in relation to DISCO's
then current application.

Subsequently however in the Board's June 19, 2006 decision
on the rate application, the Board found as follows. And
I quote from their decision on pages 51 and 52.

"While the Board reaffirms that DISCO should not move to a
flat rate immediately, its further and more detailed
examination of the evidence has led it to conclude that a
more rapid move towards a flat rate is appropriate at this
time."

And the Board made it very clear that the second phase of
that hearing required a further and more detailed
examination of the evidence.

And then as Mr. Charleson noted in his direct evidence,
exhibit EGNB-1 at page 4, the Board went on to approve a
residential rate effectively reducing the discount by two-
thirds.

Unfortunately from our perspective and for whatever

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reason, the Government did not implement this finding. And the opportunity to reduce the declining block was delayed once again.

EGNB however submits that it is instructed that based on the evidence in the last rate case, much of which is similar and expanded upon in what the Board has heard over the past number of weeks, even as early as June 19, 2006 this Board, as it was previously constituted, felt that at a minimum there should be a two-thirds reduction of the discount. As we have stated today, the evidence is clear that now is the right time for full elimination.

There are two other issues of note with respect to the residential declining block, (1) the impact elimination has on future rate design initiatives; and (2) the relationship between rate design and environmental initiatives of DISCO or other provincial agencies, some of which was also discussed by the Conservation Council a few moments ago.

With respect to future rate design developments, in response to Public Intervenor IR-14(41), DISCO stated in part "DISCO's rate design priorities are the removal of the residential end block. Gradual elimination of cross subsidization between rates, in closing the price gap between General Service I and II rates, DISCO believes

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that further progress is required in these areas before additional rate design changes are considered."

In essence, as Mr. Larlee confirmed on cross examination at transcript pages 1719 to 1722, until the residential declining block is removed, this is an impediment to implementation of further rate design changes for the residential class such as seasonal rates or time of use rates, which may be even more reflective of the appropriate price signal for DISCO at this time.

Notwithstanding how DISCO may acquire energy and capacity through the power purchase agreements, it is important to send the correct price signal so that actual usage by customers and thus the operation of NB Genco's and the IPP plants are run most appropriately.

The correct price signal to the customer will drive customer behavior which in turn drives the requirement for generation.

As Mr. Larlee confirmed on cross examination at transcript page 1723, it remains DISCO's position, as also set out in their response to EUB IR-86 that, and I quote, "The declining block structure of the standard residential rate does not reflect cost. Until the residential rate is realigned to reflect cost, a cost-based time of use rate will not pass sufficient benefit to customers."

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2 And Mr. Larlee went on to confirm that DISCO's seasonal
3 variation in load is primarily driven or results from
4 electric space heating.

5 We also note that as set out in NBEUB IR-74, and confirmed
6 by Mr. Larlee at transcript page 1723, that one of the
7 most effective tools DISCO has at present is rate
8 modification, and that changing rates sends a price signal
9 which will encourage consumers to modify their patterns of
10 energy usage.

11 It is interesting to note in this regard that with the
12 exception of the role of the energy advisers, DISCO
13 appears to have conceded that it is not carrying out any
14 extensive conservation and energy efficiency initiatives
15 itself. Rather it is relying on Efficiency New Brunswick.
16 Therefore EGNB respectfully suggests that the key tool in
17 DISCO's hands to support conservation and energy
18 efficiency is rate modification. This however is only a
19 valuable tool if it is utilized.

20 We note that also in response to EUB IR-74, DISCO
21 specifically stated that elimination of the declining
22 block will encourage conversions to natural gas or other
23 fuels and implementation of conservation measures.

24 In this regard we noted that Board Member Barnett
25 indicated in one of his questions to Mr. Charleson that

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that natural gas was not yet available in all of the province.

And he asked how this impacted EGNB's views.

Mr. Charleson's response was as follows. "You are correct that electricity consumers throughout the province do not have access to natural gas today. The removal of the declining block, while it will, from our perspective, will help to stimulate movement towards alternate energy sources, you know, natural gas is obviously our preference in terms of where we would see consumers move to. We don't -- we see it as not being strictly limited. That is obviously the most significant shift in a load that a customer can make. But it may also stimulate other conservation efforts in terms of the more efficient use of electricity itself, undertaking measures in terms of the way that they use electricity, looking at alternate fuel sources. Do they use -- you know, does it create opportunities for increased use of geothermal or other central heating products? Does it change the behavior in which electricity is consumed year-round, making more efficient use of the product? So while our interests are definitely driven more by a desire towards increase in the usage of natural gas, I believe there are secondary benefits or further benefits for consumers throughout the entire province by making more efficient use of

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electricity."

And again I believe the Conservation Council referred to that in their submissions earlier today.

Further as DISCO itself has stated, the right price signal will not only encourage conversion to natural gas but also to other fuels, be it wood-fired heating, oil, wood pellets, et cetera. And even more importantly the implementation of conservation measures.

As such the elimination of the declining block should be of benefit to all New Brunswickers, as it will send the correct price signal. And conversion to natural gas is only one of many responses to such a signal.

In areas where natural gas is available, this has the added benefit of allowing natural gas to more effectively compete in what is currently an artificially unlevel playing field where residential electric heat customers are not paying their full share of the costs they are imposing on the system.

In this latter regard we particularly note that DISCO's proposal continues to leave the electric heat segment outside of the Board-approved range of reasonableness of 0.95 to 1.05. You can see this from Table 2 on page 10 of DISCO's revised rate design evidence.

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2 And Mr. Larlee confirmed that as the residential class as
3 a whole is at 0.95, which is the lower end of the range,
4 this means that the nonelectric heat segment is
5 subsidizing the electric heat segment intra-class.

6 Transcript page 1707.

7 This is clearly inappropriate, particularly in light of
8 the fact that NB Power is a winter-peaking utility. And
9 as we mentioned previously, DISCO's seasonal variations in
10 load primarily result from electric space heating. Again
11 DISCO's proposal seems to be doing the opposite of what
12 should be done.

13 On the second point, the environment, it is clear that the
14 past number of years have seen a sea-change with respect
15 to global, national and provincial concerns with climate
16 change and that a large source of greenhouse gases is
17 fossil fuel-fired electricity generation.

18 Sending an appropriate price signal to the residential
19 class can help significantly with New Brunswick's goals in
20 this regard. Failing to do so will perpetuate the
21 existing problem.

22 As Mr. Hay clearly stated under cross examination, when he
23 was asked if the environmental impacts of electricity
24 generation could be divorced from the economics of
25 electricity generation, he stated the

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economics and the environmental result, absolutely they are both interrelated. And that is at transcript page 1026.

It is also useful for the Board to note that Mr. Hay specifically agreed that by adopting strong conservation techniques, New Brunswickers would be able to maintain competitive power bills even in the face of rising global fuel costs, and that it is important that we do not put impediments in place which would deter New Brunswickers from conservation or energy efficiency. That was Mr. Hay at transcript page 1025.

In EGNB's view, continuation of the declining block is a major impediment.

I would like to talk briefly about the Public Intervenor's proposal in this regard. Mr. Knecht, the Public Intervenor's witness, in dealing with the declining block, has put forward a three-block rate with the intention that it be aimed at the very largest loads, those that have an average monthly usage of 6000 kilowatt-hours.

Mr. Knecht indicated in his direct evidence at page 24 and in cross examination at pages 1865 and 1866 that his rate design was really only meant to impact those approximately 500 to a thousand customers at the very

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largest usage which would target the large farms.

In essence it is EGNB's understanding that his proposal was directed at dealing with this issue of large farms being part of the residential class. This of course would do little by way of the general declining block in the residential class.

And as Mr. Morrison pointed out on cross examination of Mr. Knecht, even though his rate design was developed with only the very large farm loads in mind, in that it was based on an average usage of 6000 kilowatts per month, the rate design he put forward would catch any usage above 6000 kilowatt-hours in any month. And therefore other customers would be impacted. Although that was not even the intent of the rate forum. And that is the transcript at pages 1907 and 1908.

EGNB further respectfully submits that adding a third block would likely create more misunderstandings and administrative burden in the marketplace.

As such EGNB does not believe Mr. Knecht's proposal is appropriate or warranted. We do know however that Mr. Knecht also specifically stated that the amount of progress towards getting where we want to go with respect to the residential tariff, i.e. phasing out or eliminating the declining block, is relatively modest. That is at

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transcript page 1867 to 1868.

For all of the reasons noted above, EGNB respectfully submits that it is appropriate to eliminate the declining block.

If however the Board has concerns with this at this time, EGNB believes that this Board should move at least to a rate design which would see an elimination of two-thirds of the differential between the declining block and the front block, consistent with the reduction that this Board, as it was then constituted, felt appropriate in the last rate case.

EGNB also suggests that under this alternative the Board should order DISCO to eliminate the remaining discrepancy in the declining block within no more than two years from the Board's decision.

As EGNB notes however, if anything we believe the evidence in this proceeding suggests a quicker move to full elimination by this Board at this time is the most appropriate course of action.

Moving now to the standby rate for co-generation, currently there is no standby rate for co-generation available in New Brunswick. Notwithstanding this, and DISCO's understanding that EGNB has indicated that this would be a valuable rate to having DISCO's suite of rates,

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DISCO has not proposed a standby rate.

When asked by EGNB in IR-9 on September 10th why DISCO had not put forward such a rate, DISCO stated that its rate design priorities in this case were making steps to reduce cost subsidization and intra-class adjustments to reduce the residential declining block and move the General Service rates closer together.

However, none of this would have precluded DISCO from putting forward a standby rate for co-generation which is totally separate from the other rate forms.

Interestingly in this regard, DISCO went on in the same IR response to state that "Although a standby rate is not a current rate offering, DISCO does have an embedded generation policy that allows generators, either merchant or co-generators, to connect to the distribution system. The absence of a standby rate does not preclude co-generation from being established."

However, the issue is not whether a co-generator can establish and connect to the system. It is whether there is a viable rate for standby or backup power for that co-generator.

When asked in the same IR-9 what existing rate would DISCO apply to a co-generator requesting standby service, DISCO stated that the rate application guidelines in its

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rates would determine which rate was applied to a co-generator requesting service. It gave the examples of General Service, small industrial or large industrial. However on cross examination Mr. Larlee specifically confirmed that none of these rates were developed with standby service in mind. That is at the transcript page 1734, 1735.

As EGNB's evidence on this point, which we note was not challenged by anybody on cross examination, specifically states "Co-generators require backup power to support their otherwise single unit contingent situation. NB Power has a generation policy that appears to support these principles. The shortcoming in this policy is that it would require the distributed generator to obtain this standby service using a rate that is generally designed for customers that require all of their load to be supplied by DISCO." That is EGNB's evidence, pages 8 and 9.

And subsequently, in response to DISCO IR-5 on November 9th, EGNB stated "DISCO's rates were designed for full-requirements customers and not customers requiring only backup service, who would typically exhibit substantially lower load factors and coincident factors and full-requirements customers. As such DISCO's rates

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would overcollect on a cost causation basis from backup service customers. These customers would be significantly less likely to contribute to the coincident demands of the system. These inherent problems with the existing rates do not incent co-generation, since the only economic benefit of the co-generator under these rates would be the avoided energy rate. A properly designed standby rate would take these issues into account."

We noted again in cross examination that Board member Mr. Barnett noted that due to the design of the PPAs it may be necessary to take into account the relationship between the PPAs and DISCO's rates with respect to capacity provided for co-generation.

This of course could well be the case. And it is exactly the sort of issues that DISCO should take account of in developing a proper standby rate. Simply not developing the rate and not having one available in its suite of rates is however not the answer.

In fact in the last rate case where EGNB had retained its own rate design expert, Dr. Rosenberg, whose testimony was mentioned in passing on a couple of occasions by Mr. Knecht in this proceeding, EGNB did put forward proposals for a standby rate.

At this time, and in the absence of a DISCO proposal,

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EGNB is not asking the Board to institute a standby rate, but rather as part of its decision to order that a proceeding be put in place in which this matter would be addressed. EGNB believes it would be appropriate for the Board to order that DISCO bring forward a standby rate in that proceeding which could be reviewed and commented on by intervenors. If intervenors felt it necessary, upon seeing DISCO's rate design, they could provide comment or alternate rate proposals.

Mr. Chairman and Board members, in support of that proposition and at the same time dealing with the issues of the motion, because this is where they tie in with EGNB's perspective. I will now comment on that. And these comments go essentially to the questions of the motion in front of the Board from the CME as well.

We note that our view on the standby rate, approach to instituting a standby rate, would be completely consistent with the Board's past practice in the 2005 CARD proceeding, who had ordered the Concentric reports to be prepared with respect to issues that had arisen in the proceeding but on which the Board was not yet fully comfortable in making a final determination.

In particular we note section 130 of the Electricity

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Act provides that any order of the Board is subject to such terms as the Board considers necessary in the public interest.

Section 130 is a very broad provision, certainly allowing the Board to make an order such as that requested by EGNB and possibly some of the items that are being requested by orders. It is subject to such terms as the Board considers necessary in the public interest.

We also note that section 128 (1) (b) of the Electricity Act provides that "the Board may, on its own motion, or on the complaint made by any person, inquire into here and determine any matter where it appears to the Board" -- and this is going to the (b) part -- "that the circumstances may require it in the public interest, to make any order or give any direction, leave or approval that by law it is authorized to make or give concerning any matter, act or thing that by this part or a rule, order or direction is prohibited or required to be done." Again very broad.

Finally and even more specifically, section 101 of the Electricity Act, which relates directly to DISCO's applications to the Board for approval of changes in its rates, charges or tolls, specifically notes in subsection 101 (4) that the Board may, when considering an

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application by DISCO, take into consideration among other things -- and I'm only going to list two of these -- number (b) proposed allocation of costs among customer classes, and number (c) rate design matters.

We therefore believe that the Board, certainly in this proceeding, has the right to make an order arising out of this proceeding that would allow for a subsequent proceeding to deal with matters that have been brought forward here but on which the Board does not yet believe are fully ripe for implementation.

In her case the standby rate would be one of those. And we believe it is perfectly appropriate in the public interest and based on the evidence before this Board to make an order to have a proceeding to deal with.

Related to this issue is the fact that many other matters are also before this Board which, although again possibly not fully ripe for final determination, do require action on a timely basis.

And if there is any concern at all with jurisdiction outside of the application, since the Board is now within an application, you do have the right, in EGNB's respectful submission, to make orders with respect to these matters.

For example only, the Concentric Energy Advisers'

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report has many recommendations. It has been filed in this proceeding. I don't think it has an exhibit number. I think it might be identification number 9. Included for example in chapter 2 of the Concentric report, it has made recommendations dealing with the usage characteristics of residential customers. And it stated that DISCO consider the transfer of nonresidential load of the large farm or church accounts to GS. Until the issue of the nonresidential load and the residential account is dealt with, the presence of these customers will likely continue to skew the average of rate impacts and cloud the data relevant to this Board to what is truly residential class. In this regard, at page 54 of its report, Concentric states as follows. "As a final caveat Concentric recommends that any changes, such as the above in the residential rate or other existing rates be done as part of an overall review of all of DISCO's rate structures. This review should be a separate process where the parties are not burdened with a need for revenue changes. All parties would be placed on notice of the scope of review and the potential changes and would have a reasonable opportunity to participate. Making piecemeal changes to particular rate classes without consideration of the

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2 impact on other rate classes or effects on the company as a
3 whole can lead to unanticipated consequences."

4 For example in a companion report, chapter 4, Concentric
5 reviews suggested changes to the General Service class.
6 Changes in either the residential or General Service class
7 could have synergistic effects on the other classes as
8 well as the overall balance of the company's class cost of
9 service. To lessen the risk of unanticipated changes, all
10 proposals should be studied as a whole.

11 EGNB agrees with and endorses this position and notes that
12 it was also fully accepted by DISCO by Mr. Larlee at
13 transcript pages 1732 and 1733.

14 Accordingly EGNB believes that the Board should order that
15 such a review take place in 2008, with evidence from DISCO
16 required to be filed in the spring of 2008 for a hearing
17 no later than the fall.

18 In this regard EGNB suggests at a minimum the following
19 issues should be dealt with as a part of that review. (1)
20 a standby or backup rate for co-generation; (2) the
21 appropriate approach to treating farm and church customers
22 in the residential class; (3) seasonal and time of use
23 rates; and (4) cost allocation as among the various
24 customer classes.

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2 This morning I believe Mr. Morrison in his argument stated
3 that DISCO does not object to a review. And he stated
4 that these matters are best dealt with in a proceeding
5 where all rate design changes can be reviewed. Again we
6 agree.

7 Since the Concentric report is not in front of all parties
8 and has utilized the most current data then available, it
9 would seem to be a waste of time and effort if this report
10 was merely to now be put on the shelf.

11 Further, the issue of a standby rate should be dealt with
12 at the same time as other rate issues, since there is no
13 current rate available for this class of customers.

14 With respect to the issue of seasonal and/or time of use
15 rates, we note that in response to EUB IR-86, DISCO
16 specifically states that the declining block structure of
17 the standard residential rate does not reflect cost, and
18 that until the residential rate is realigned to reflect
19 cost, a cost-based time of use rate will not pass
20 sufficient benefits to customers.

21 DISCO goes on to state that it will consider time of use
22 pricing along with other rate structures as possible rate
23 options for the future.

24 Coming back to our earlier argument, as the residential
25 declining block rate structure is removed,

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says DISCO, as smart metering technology becomes less costly, opportunities may arise to implement alternate rate structures.

Again, Mr. Chair, Board members, this in itself is a significant reason as to why the Board should move in this case to eliminate the declining block, so that issues of an even better price signal from either time of use or seasonal rates, only for example, can be fully addressed in a generic hearing in 2008.

As it is not anticipated currently that there would be a rate increase proposed in 2008, this will also give the Board considerably latitude in ordering potential changes in rate forms while not being burdened with a preexisting revenue requirement application.

There has been some suggestion that any review should possibly be deferred until the future of NB Power is clearer. And I think Mr. Morrison may have alluded to that this morning in response to one of the questions. EGNB submits however that changes are occurring regularly in the electricity marketplace. It is uncertain when or if the Government will revise the structure of NB Power or how it will do so if it decides to do so.

But regardless of whether NB Power is restructured, issues such as rate design will undoubtedly in our view be

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applicable whether as to DISCO or to a restructured NB Power.

There simply does not appear to be a legitimate reason for the Board to defer consideration of the outstanding rate design issues.

It would be unfortunate if in this time of heightened awareness over environmental issues, energy conservation, energy efficiency, et cetera the use of progressive rate structures such as seasonal rates, time of use rates are prohibited because DISCO is moving, in our view, so slowly to eliminate the declining block.

So long as the declining block remains, it appears DISCO will continue to argue that other rate changes cannot be done. And on DISCO's schedule nothing would occur until at least into the next decade. And that would be even absent any further arguments for delay that may come forward.

Mr. Chair, Board members, one further item before I close off. EGNB did note that some parties have suggested in this proceeding that DISCO's proposal to target an interest coverage ratio of 1.25 times the current application is not reasonable.

Having seen the evidence in this regard, EGNB would merely like to note to the Board that DISCO's approach seems extremely conservative and is only a small step

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towards ensuring that DISCO's costs are reflective of a market participant in what is hoped to be a competitive energy market.

DISCO's costs will continue to be artificially lower than otherwise, thereby continuing to send an inappropriate price signal, if DISCO is not allowed to move at least in some small measure towards a capital structure reflective of a commercial entity.

And we believe their proposal is really only a small measure in that regard. And we do commend it to the Board.

Mr. Chairman and Board members, thank you, on behalf of EGNB. And certainly if there was any questions, I would be pleased to take them.

CHAIRMAN: Thank you, Mr. MacDougall. Any questions from the Board? Mr. Johnston?

VICE CHAIRMAN: Mr. MacDougall, you talked quite a bit about the large farm issue and the residential class. And you suggested there was some ways that perhaps that could be dealt with. And I am not sure whether you said this specifically, but were you thinking of enlarging the first block to cover most reasonable residential uses and then still having a declining block for the farms, is that the kind of an idea you were suggesting?

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MR. MACDOUGALL: That is the kind of idea, Mr. Vice Chair for sure. To enlarge I think what we would suggest is if the Board felt it appropriate to eliminate the declining block they would do so, but they could possibly set a threshold, you know, for example, Mr. Knecht and the Concentric folks have said an average of over 6,000 kilowatt hours per month. A threshold like that of customers that you might look at it say well they are unduly impacted and then for them somehow phase it in or have some approach to that.

The approach you suggested may be appropriate. I think the better signal would be to let people know that the declining block is gone, but that if there is an undue impact from the Board's perspective on a certain group of customers, a small group well-defined, that that could somehow be dealt with by another aspect of the Order of the Board in that regard be it phase in or a deferral or something like that.

VICE CHAIRMAN: Thank you.

MR. MACDOUGALL: You're welcome.

MR. BARNETT: Again the Vice Chairman has provoked a follow-up question, Mr. MacDougall. I think I heard you say however that you would be looking at the -- there were four items that could be reviewed sometime in 2008, later

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2 on in the year, in the fall, I believe. One of those was an
3 approach to treat farms, et cetera, is that correct?

4 MR. MACDOUGALL: Correct.

5 MR. BARNETT: So what suggestion has been put forward was
6 something that could be discussed in a hearing of that
7 nature, is that was I understand?

8 MR. MACDOUGALL: Correct. But what we didn't want to see
9 happen is that the declining block not be eliminated
10 solely because the Board had a issue with the farm
11 customers and then defer that to 2008, but not deal with
12 the primary issue.

13 So we do feel that elimination of the declining block is
14 important. And we don't even know that it is that big an
15 issue for the farm customers per se, who are probably
16 better off in another class, but the development of that
17 other class or other approaches to them could certainly be
18 dealt with in 2008, but we wouldn't want that issue itself
19 to hold up the elimination of the declining block if the
20 Board was so inclined.

21 MR. BARNETT: Thank you, Mr. MacDougall.

22 MR. MACDOUGALL: You're welcome.

23 CHAIRMAN: Thank you, Mr. MacDougall.

24 MR. MACDOUGALL: Thank you, Mr. Chair.

25 CHAIRMAN: I guess next on my list would be Irving Oil

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2 Limited. When I took the appearances this morning, there was
3 nobody was here and can I assume there is still nobody
4 here from Irving Oil? That would take us to JD Irving
5 Pulp & Paper Group. We will take a little recess, Mr.
6 Wolfe, and then we will hear from you in about 15 minutes.

7 (Recess - 3:00 p.m. to 3:15 p.m.)

8 CHAIRMAN: Before we get going there has been I guess some
9 inquiries as to how far we are going to go today in terms
10 of hearing arguments.

11 I am thinking that probably about 4:00 o'clock. And I am
12 assuming that that's probably going to allow for two more
13 intervenors to give final argument today. So JD Irving.
14 And then the next one up on the list would be Dr. Sollows,
15 but I understand that Dr. Sollows and Mr. Peacock have
16 agreed to change the order in which they make argument and
17 that there is nobody who has a problem with that.

18 So I am assuming that's probably about as far as we are
19 going to get today. Tomorrow morning, in order to give us
20 a better chance of completing this tomorrow, I think that
21 we will start at 9:00 rather than 9:30.

22 Mr. Wolfe, are you ready to proceed?

23 MR. WOLFE: Thank you, Mr. Chairman. Good afternoon, Mr.

24 Chairman and Board. First I would like to talk about the

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document that became my exhibit 1 on the very first day of the hearings.

That exhibit dealt with the past three year's of earnings by the various companies within the NB Power Group. And the exhibit showed that over the three years since re-regulation, DISCO has earned \$13 million versus Genco earnings of \$102 million.

So in other words, Genco earned almost eight times the earnings of DISCO over that first three years.

Now, Ms. MacFarlane challenged my eight times statement saying the Genco income should be higher based on its higher asset base. So I went back and recalculated the numbers. Genco still earns three times that of DISCO when you base it on assets.

So it doesn't change my belief that Genco benefits greatly by overcharging DISCO for the power through the PPAs. In fact, Mr. Strunk also says in his evidence that the ratepayers are disadvantaged by the PPAs from Genco.

Further, both Mr. Hay and Ms. MacFarlane stated their mandate from the government was to breakeven.

Now there was some debate over the definition of breakeven at the time. And I have no problem with the statement that NB Power should have a positive net income. And I believe the government, when they said their mandate

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was to breakeven, they only see the consolidated numbers. So that means the mandate was that NB Power will breakeven, not that one company would overcharge another in order to show an overall return.

So I believe that in the current system, the only one that loses in the existing structure are the ratepayers.

Next I would like to comment on the hedging policy. The evidence shows the hedges on fuel were projected to lose \$44.7 million for this test year. And this amount was passed on to DISCO as an additional fuel charge in the budget. That turned out to be well over half of the projected shortfall of \$75 1/2 million for this year.

Now the hedging policy dictates that fuel is hedged 18 months in advance. So that means the test year fuel was hedged from the period of time from October '05 until September '06. So I went back and looked at the spot prices and the average price for crude oil in that 12-month period was \$66 a barrel. \$66 U.S. a barrel.

So the best way to compare cost of fuel, oil, natural gas is to convert them crude oil equivalent on btu basis. So doing that, the heavy fuel was hedged for this test year

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MR. MORRISON: Mr. Chairman, I don't know if Mr. Wolfe is giving new evidence or making argument. Perhaps he could

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direct us to where these figures are coming from in the evidence?

MR. WOLFE: I don't have the book with me but it was in one --

CHAIRMAN: Certainly. The conclusions that you are drawing, are they based on the evidence or your take from the evidence?

MR. WOLFE: No, they are based on the evidence.

CHAIRMAN; Proceed.

MR. WOLFE: The heavy fuel oil was hedged at 52.76 per barrel and that's in the PROMOD run. And I could get the book numbers for you tomorrow, if you wish.

CHAIRMAN: Well I am just going to let -- you proceed and we will see at the end of your presentation whether we feel that we do need those references.

MR. WOLFE: So taking that 52.76 and converting it to -- in btu's to a crude oil price, it comes to \$70. That's quite reasonable compared to the \$66 that was in place for that 12-month period.

But for natural gas -- and the PROMOD run has it hedged at 12.25 per million btu's. And that's in the evidence as well. And converting that on the same basis works out to an equivalent of \$110 per barrel of crude oil versus \$66 at the time.

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2 So there is absolutely no reason in my mind to hedge
3 natural gas at such high levels. And worse, the evidence
4 shows that three months after the test year budget was
5 finalized, that is, January 2007, again in appendix 1, and
6 this was three months before the test year began, a new
7 projected and a new updated hedge loss had been reduced by
8 more than \$30 million over what was budgeted. If that
9 truly happens then the ratepayers were charged \$44.7
10 million and Genco gets a windfall from the actual hedged
11 losses. Just one more way that DISCO is overcharged by
12 Genco.

13 Part of the policy in hedging is that Genco will hedge
14 between 80 and 100 percent of the projected annual heavy
15 fuel oil and natural gas needs. However, according to the
16 evidence, 100 percent of expected fuel needs were hedged
17 for the test year. I would suggest that it is impossible
18 for anyone to predict with such accuracy, and as it turned
19 out, there has been a huge reduction in load, and it's
20 likely result in a lot of hedges being cashed out.

21 Once again any gain or loss will flow to Genco, but it
22 seems to be a very inefficient way to conduct a hedging
23 strategy. Every time you buy and resell hedges, it comes
24 at some cost.

25 As Ms. MacFarlane says in the transcripts, exercising

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the hedges are, and I quote, "mechanistic." And I quote again, "there is no judgment to it from a price perspective and there is no judgment to it from a timing perspective."

Now NB Power is a billion dollar company. And with all due respect, I would suggest they should use some judgment in all large transactions, especially when it results in an extra \$44.7 million charge to the ratepayers.

So I believe the hedging policy needs to be altered so that it more closely follows the market. And that if it can be altered and if the Board would so order, our company is quite prepared to take the risk and we would buy our power based on the spot fuel pricing. We will do our own hedging. Today our company uses about a hundred million dollars worth of fuel and we hedge much of it. I wouldn't be here today looking at you if I had such huge losses in my hedging -- hedging my hedging needs.

So I think the Board needs to order changes to the hedging policy in order to more closely follow the market.

Next on the PDVSA settlement, the evidence shows the total value of the settlement is estimated at \$333 million versus the original lawsuit loss of \$2.2 billion. As other people have said, I think that it's not fair that

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the government got their hundred percent of their share. And it would be much more equitable to share the settlement value equally on the percentage basis. This would result in about \$7 million return to the government and not the proposed 46.7 million. And I would suggest that the roughly \$40 million would flow to DISCO through this proposal. It can be paid out over the next four or five years to help levelize DISCO funding requirements.

Now with respect to the contention that NB Power -- that the government reimburse NB Power for the fuel handling write-off in 2004, I have read and reread the annual report from NB Power. I can find no mention of the write-off being paid by the provincial government. As well I can find no indication the government picked up \$47 million debt as a changeover in 2004. Ms. MacFarlane also stated in the evidence that the government took over the debts in 2004 with the reregulation. And the ratepayers did not pay it for the write-off. Yet in that very first year of regulation, less than six months after the break of NB Power, the rates were raised by 3 percent on March 31st '05. If we didn't pay for it, I wonder where that 3 percent went since there was another 3 percent increase about three months later. And likely I think -- and to be a fair resolution to this thing is to share equally

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between the ratepayers and the shareholders on the money that come in from PDVSA.

Next I would like to talk about the DISCO proposed increase of 7.4 percent for large industrial. It is likely been a very long time if ever that the industrial classes, both large and small have seen such huge change in disruption. Almost all of New Brunswick's sawmills are either closed or running reduced shifts. One large load disappeared last summer. Another large load is going to disappear next month. And you heard on Thursday evening from Mr. Cronk about devastating job losses in the province. We also heard at the same time that the Flakeboard plant in St. Stephen has the highest cost power when compared to other Flakeboard sister plants. The same is true in the groundwood paper business, when we compare the power costs at Irving Paper with other competitor mills in both the U.S.A. and Canada. Unfortunately by next month, Irving Paper is going to be the only groundwood paper mill left operating in New Brunswick. My calculations tell me that about 25 percent of last year's industrial load will be done by the end of this test year. Now Mr. Larlee stated that loss of load will result in the benefit of close to \$4 million to DISCO in the test year. He also stated the loss of the large loads

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will put, and I quote, "should put upward pressure on the revenue cost ratio."

Now the proposed extra 1 percent to large industrial rate may not seem like a big number, but for Irving Paper alone, just by itself, each 1 percent equates to more than \$700,000 a year, not a very small amount.

So for all these reasons and with all the disruption currently taking place within the industrial cost sector, there is no reason put more undue burden on the large industrial group. And the increase to this sector should be no higher than the average rate increase approved by the Board.

And lastly the CME has asked for this Board to consider a cost allocation hearing. And for this hearing NB Power has followed the NB Power 2005 Board ruling. However in 2005, before the ruling was made, NB Power and a couple of other expert witnesses all suggested there was a better way to allocate costs. They were turned down and the Board ordered the CARD ruling in 1992 should take precedence.

Now at this hearing the CME presented evidence by Mr. Drazen. He was largely unchallenged in his views. His evidence suggested that he current cost allocation method for the large industrial is flawed and should be

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revisited. And at the same time as I said earlier there is huge changes in the industrial sector electrical loads. And that likely further alters the revenue cost ratio. Now I listened to Mr. Lawson this morning and I admit that I know nothing about the legal arguments. But I think it's fair to say that most people in the room know the current allocation needs to be updated. To me it is quite simple. You make a decision in this rate request. And then that rate request you just conclude that a cost allocation hearing should happen sometime next year. And then we could set the revenues and that would be for the end of the '08-'09 year, which is more than a year away. Other than that, I strongly support the motion of the CME.

So in summary, I believe that the evidence shows that Genco consistently earns more than DISCO to the detriment of the ratepayers. Secondly, the PDVSA settlement should be fairly allocated between the government and DISCO. Third the current hedging policy needs to be overhauled to add some judgmental thinking to the process. Fourth, the proposed 7.4 increase for large industrial should be rolled back to no more than the average -- the overall average rate increase. And finally our company supports the CME most -- and I have been hearing which will revisit

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the cost allocation between classes.

Thank you, Mr. Chairman. That completes my presentation.

CHAIRMAN: Thank you. Any questions from the Board? Thank you very much, Mr. Wolfe. The next intervenor on the list is N.B. Forest Products Association. Nobody was here this morning for appearances. In fact I don't believe they have been here for most of the hearing, but I will canvas the room one more time. Anybody hear from the N.B. Forest Products Association? All right. That would take us to the self-represented intervenors, which is Dr. Sollows. And by agreement then, Vibrant Communities Saint John will use that slot.

MR. PEACOCK: Thank you, Mr. Chair. I would like to begin my final argument by referring to two very different statements, one from NB Power and one from one of the utility's smaller customers.

In NB Power's strategy map of 2007 the effective monopoly provider of electricity in this province states its mission to provide New Brunswickers with electricity at the lowest possible cost consistent with safety, reliability and the environment. I think that this is a very appropriate mission statement. Oh, I apologize, I just skipped ahead too far here. I think that this is a

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very appropriate mission statement. And I further believe that this entire rate case can be judged in part by the utility's ability to live up to its own words.

Unfortunately its record on this is mixed. In a number of areas, the words of the mission statement are effectively translated into deeds. Certainly its safety record is admirable and the consistent reliability of the NB Power grid is greatly appreciated by many New Brunswickers, now that many of us are currently waking up to -20 degree mornings. In such cold mornings waking up knowing that there is electricity to run the coffeemaker is something that we too often take for granted.

In other parts of the mission statement, however, NB Power's actions don't actually mesh with its noble words.

I am specifically referring to NB Power's environmental stewardship and its record of providing New Brunswickers with electricity at the lowest possible cost.

I will go in some detail on these matters in the latter part of my argument, but for now would like to turn to a very different kind of statement. One that was sent to me in an e-mail by a NB Power consumer the after this Board held its Public Comment Session. The e-mail reads, I was given your name and e-mail from a friend of mine. She said you may be able to help. My hydro bill is quite

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high. I was supposed to pay \$750 today, but am unable to.

They still have a \$360 deposit from 2004 when I had the hydro hooked up here and said they cannot apply it to my bill. I currently have no income. I am almost 16 weeks pregnant and just applied for income assistance yesterday.

I am at a loss as to what to do. My car is not working.

I am still applying for jobs, but as soon as they see I am pregnant, that's it, no job. I guess my question is can they shut my power off in the winter months? And is there someone I can speak to in regards to having my deposit put onto my bill?

Obviously this is a very distressing statement. And I unfortunately have received dozens of similar statements in the year since I began participating in the regulatory process. These sorts of statements are brought to you because they are rerouted in reality. I suggest that behind all the billing statistics in Bonbright references, there is a different -- a very different world from the one found in this regulatory hearing. There is in New Brunswick that is truly struggling to get by. One in which thousands of young families are being disconnected or are worried about being disconnected and where entire communities face economic demise because their sole industry can't survive another rate hike.

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2 In reading the transcript from the recent Public Comment
3 Session, I found it revealing how the concerns of
4 virtually every segment of New Brunswick, its poorest
5 residents, its small businesses, its farmers, its paper
6 mill workers were in fact shared concerns. All of these
7 segments of New Brunswick society will face economic
8 challenges if DISCO receives the full amount of its rate
9 increase. While some New Brunswickers may bear a heavier
10 economic burden than others, they will all suffer. And in
11 most cases, the individual New Brunswickers who will
12 suffer the most have incomes well below those found in
13 this hearing room.

14 All of this to say, Mr. Chair that this Board has some
15 very difficult decisions as they relate to the rate case.

16 While the utility has certain obvious revenue needs, the
17 ratepayer in general is also facing significant economic
18 challenges. In trying to decide where to find a balance
19 between these competing needs, I would suggest broadly
20 that the Board rule in favour of the small utility
21 customer, both in its weighing of the revenue requirement
22 and in setting general rates.

23 I say this because of the way in which power politics
24 works in New Brunswick. From its various intervals and
25 levies, taxes and charges, it appears that NB Power has a

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very close relationship with its shareholder, the government of New Brunswick. If DISCO's rate case is rejected in whole or in part by the regulator, then NB Power will in all likelihood survive to present another rate case. It's only because it is in the interest of its government shareholder to ensure this. While I don't foresee an equity infusion coming from the government any time soon, I could certainly imagine a situation in which some of the levies imposed on the utility be it Order-in-Council might be reconsidered if NB Power could not meet its expenses in a regulatory environment.

If newspaper surrounding the famous debt portfolio management fee are an indication, it would appear that many MLAs fear that whatever costs not met by the ratepayer must be met by the taxpayer. Given the choice, we would prefer if these levies were in fact borne by the taxpayer instead of the ratepayer, because the tax system is progressive, while the rate system is not.

I can also imagine that if your regulatory decision creates economic losses in certain rate classes, then representatives of these rate classes would immediately seek relief in some form from Fredericton legislators. I state this not out of criticism, but out of a basic reality. When significant economic interests are

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threatened, it is very natural for those economic interests to lobby our provincial -- our provinces MLAs.

While NB Power and some of the province's significant economic interests can certainly respond to any rate decision by seeking legislative changes or economic relief, there are literally thousands of individual ratepayers, who will likely not take the effort to lobby their MLA or petition for large scale financial assistance. They are the small residential consumer and they are arguably more injured by the Applicant's rate proposal than any other group, because of this, we would ask that you prepare a regulatory decision that is in the best interest of this group.

In our evidence we laid out some proposals that we believe are fair to the small consumer. And we hope that they are fairly considered by this Board. These have included some suggestions on reductions to the applicant's revenue requirement, in proposals for a more aggressive removal of the declining block rate and a lowering of the monthly service charge.

I would now like to briefly deal with the revenue requirement. In the cross examination of my evidence, I suggested that much of this utility's expenditures are in fact prudent. I would argue that this observation was

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made in part because I am a fairly honest person and I operate under the assumption that others who have participated in this process have honestly put forward complete evidence. I might add however that various utility terms, such as PROMOD or PPAs have made it somewhat difficult for this intervenor, not to mention any other ordinary New Brunswicker, who had never encountered the regulatory process to fairly claim that they understand in detail the significance of the Applicant's expenditures. That being said, I hope that the regulator examines the Applicant's revenue requirement completely with the aim of removing whatever expenditures that fail to meaningfully contribute the provision of electricity at the lowest possible cost to the ratepayer. While the removal of such expenditures may cause financial harm to NB Power, I would argue that their removal is in the best interest of all classes of ratepayers. To put forward but one example, I asked the regulator how the utility's operation of an on-line kid zone promoting electricity somehow contributes the provision of electricity at the lowest possible cost? As the Board is aware much of our proposed reductions to the revenue requirement are related to

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environmental-related expenditures, such as the administrative costs related to the work of the Environment Committee or the staff expenditures related to the Energy Advisers program.

I would like to briefly speak as to our rationale behind removing these expenditures. We are all quite aware that a significant part of DISCO's electricity purchases are ultimately from Genco's carbon intensive thermal plants. And I would argue that these purchases contain a significant, if hidden, environmental cost. While I am not yet prepared to argue that this Board should impose externalities like environmental costs onto the ratemaking process, I would suggest that as long as the declining block rate exists, this utility is not living up to their all in claims of environmental stewardship. As a result, I don't feel that any expenditures related to environmental questions should be borne by the ratepayer.

In my own testimony I made reference to "Hot Air", a bestselling public policy book recently authored by Jeffrey Simpson and Marc Jacquard. In regards to proper price signals the authors note, polluting behaviour must have a price. In a free market society to throw away the price mechanism is to discard a basic determinant of

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economic behaviour.

I would suggest that as long as the price mechanism is not respected by this utility for as long, in other words, as they propose to continue offering electricity at a volume discount, then they should pay an appropriate penalty. They should be penalized by the regulator for not applying basic economic theories, including I would argue, the principles of Bonbright, applying these theories of purchasing behaviour and price signals to their own rate design.

I would like to finalize my argument in regards to the environmental costs of the Applicant by focusing on the specific program of Energy Advisers, which is a key component of DISCO's very limited DSM regime. Somewhere within the Applicant's testimony of December 3rd, reference was made to the fact that the program has six advisers I think and that one of the performance measures of this program was the number of seated calls these advisers receive, which I believe the Applicant stated to be about 6,000. This works out to maybe a thousand calls per adviser in any given year or roughly three seated calls per day. To put this into some perspective, I have a sister-in-law who works at a Saint John call centre at Air Canada and she undertakes an average of 70 calls in

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any given day.

Of course, we are already aware that the Energy Advisers' program has a degree of duplication with Efficiency N.B.'s own consumer outreach program. And we would submit that the ratepayer shouldn't have to pay twice in rates and in taxes for what is essentially the same service.

I would now like to return to my argument that the debt portfolio management fee shouldn't be borne by ratepayers, since it is essentially a form of a tax applied just so NB Power's debt could be guaranteed by the hardworking residents of New Brunswick.

Now the Applicant has made it very clear in his cross of our evidence that since this effective tax has been approved by Order-in-Council, it is arguably beyond the scope of this regulator.

Now I am not a lawyer, so I can't possibly refute his observation on a legal basis. I will state however that just because something receives the legal seal of a Cabinet decision doesn't mean that it is right or that is in the best interest to ratepayers. I can only highlight the Order-in-Council decision overturning the last PUB ruling to support this argument. Even the Applicant would have to agree that one of the reasons why we are here

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today is because an Order-in-Council regrestfully made what was a right and balanced regulatory decision void by simple Cabinet decree.

What to do then? Well I have asked the regulator to question whether or not the debt portfolio management fee helps provide electricity at the lowest possible cost. But surely the regulator can ask similar sorts of questions in regards to any number of the levies imposed by Electric Finance. If we are to be fair to ratepayers, then we should challenge the idea that the provincial government should be able to treat this utility like an instant teller.

The final part of my argument deals with rate design. And because much of this is well-trodden ground I will be brief. We endorse a much lower monthly service charge. An idea the Applicant seems to suggest is difficult to achieve if we are to embrace the idea of cost based rates.

And more specifically the Applicant's evidence that suggests that an appropriate monthly charge may be as high as \$22.

This is another area I think in which the regulatory process has put too much weight in cost allocation evidence that a number of intervenors in this room have trouble with. If for instance we accept that the

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applicant is doing what is proper by undercharging \$19 instead of a cost allocated \$22, then overcharging the general service class must also be seen as proper in the sense that their rate proposal is based on the same group of cost allocation evidence. Of course designing rates based on such a cost allocation is unfair to both small business and small consumers. As the Applicant has already suggested rate design is more art than science. And there is no perfect cost allocation study. All of this suggests that rate design can be manipulated to suit the needs of all sorts of interested parties, including that of the applicant. If that is indeed the case, then perhaps it would be prudent to ask for a rate design that favours the small consumer.

I am sure that if CME's proposal for a full CARD hearing were to gain momentum, then a close look at the cost allocation numbers would certainly help produce a monthly service charge within the residential class that is closer to our number of \$13 than the Applicant's number of 22. At least my rather rudimentary understanding of Bonbright would help lead me to this conclusion. And I believe that the testimony of Mr. Knecht also suggested a possible lowering of the monthly service charge.

While I have no informed opinion in regards to the CME

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2 proposal, I will highlight the fact that a full CARD study was
3 proposed under the provincial government self-sufficiency
4 task force. While government has yet to act on that
5 recommendation, it would seem to me that it would be
6 prudent to have a proper cost allocation study undertaken
7 in the near term. For it to work, I would hope that it
8 would be undertaken by the regulator and that there would
9 be a greater clarity between the operating arms of NB
10 Power whenever a CARD process began. That being said, I
11 would feel that that this Board can certainly set
12 appropriate rates now. And I would suggest that it use
13 the rates proposed in the June 2006 decision as a
14 template. I referred to the June 6th PUB decision as a
15 template in large part because I feel that the rates
16 proposed in that ruling were just and reasonable at least
17 in regards to their approach to the small consumer. Of
18 course that decision aggressively dismantled the declining
19 block rate and an action we certainly endorse. Other
20 intervenors, including Enbridge Gas and Dr. Sollows may in
21 fact support an even more aggressive regulatory approach
22 in regards to the declining block rate. Because of this
23 we would recommend that the Board use the June 2006
24 decision as a minimum template for rate design and be even
25 more aggressive in rate realignment if it feels that

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further action is a requirement.

Dr. Sollows in his evidence has showed just how flexible the regulator can be in applying rates, while at the same time meeting the Applicant revenue needs. I might add that Dr. Sollows has also introduced some interesting evidence on the effect that climate forecasts may play on reducing the Applicant's revenue needs.

I propose that we move quickly on the declining block rate, Mr. Chair, in large part because of the issues I highlighted in the latter part of my evidence. While the current rate design may support individual enterprises like that of Jolly Farmer, who appeared on Public Comment Day, it also harms a great deal many low income New Brunswickers, like the individuals from Moncton, who spoke about poverty during the same Public Comment Session. In my mind any price signal that rewards a few at the expense of many is bad public policy and puts pressures on legislatures to develop separate energy relief packages for both greenhouse operators and lone parent families. Of course fixing these challenges in front of the regulator is not without its challenges, but it is the right thing to do.

I will put this into another perspective. It makes no sense to extend back public policy until 2010 if all in

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the room agree that it is bad public policy now. Let's not confuse gradualism with excuse for inaction, especially when eliminating the declining block rate entirely would have relatively little effect on close to two-thirds of the residential class.

In conclusion, Mr. Chair, I would like to simply highlight our requests to the regulator. *Backup (1)* and eliminate from the revenue requirement all of those expenditures that do not reflect the Applicant's mission statement. (2) the Board question the merit of honouring the Applicant's environmental expenditures when more than one Intervenor has questioned the Applicant's record of environmental stewardship. (3) that the Board be very flexible in its application of cost allocations to any rate proposal in large part because a number of intervenors have questioned the merit of individual numbers found within the Applicant's cost allocation. And some have in fact argued for a separate CARD hearing. (4) the Board questioned the merit of the various Orders-in-Council that impose government levies upon the utility effectively placing ratepayers at a disadvantage in comparison to taxpayers. (5) the Board develop a rate proposal that is more just and reasonable to the small consumer than the rate proposal offered by DISCO. On this

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matter we recommend that the Board use the June 2006 PUB decision as a starting template in regards to rate design. (6) the Board reduce the proposed monthly service charge to a level more consistent with other utilities across Canada and utilize a more literal interpretation of Bonbright to help this rate design process. (7) the Board aggressively reduce the declining block rate leading to its elimination either at the end of this hearing or by the end of 2008.

That is all in terms of our official argument. I would like to thank the Board, its Staff, the Public Intervenor, all other intervenors and lastly the Applicant for allowing me to fully participate -- to fully participate in this regulatory process both under the PUB and the current EUB. I know that the questions I have been asking were shared by a great many ordinary New Brunswickers and I am honoured to have served as their proxy in what has been quite an education.

I hope that I haven't been too much of a headache for the Applicant, for I can assure those on the other side of the table that having read their mission statement I can state that we believe is essentially the same thing. We both want electricity at the lowest possible cost consistent with safety, reliability and the environment.

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In regards to the performance of NB Power our only disagreements have been over details. In the big picture we both want what is found in the utility's mission statement, a more vibrant New Brunswick. Hopefully this regulatory process will help us achieve this.

I wish all of you a happy holiday. Everyone in this room certainly deserves a holiday at the very least. Thank you.

CHAIRMAN: Thank you for you presentation, Mr. Peacock. Any questions from the Board? I guess we have no questions. I guess the next party for argument would be the Utilities Municipal. And we had planned to end in about 10 or 15 minutes. But I suppose you are going to be a little bit longer than that are you, Mr. Zed?

MR. ZED: If I have till tomorrow, I can probably cut it down to about 45 minutes.

CHAIRMAN: All right. And I think -- so tomorrow we will hear from Utilities Municipal, Dr. Sollows and the Public Intervenor. So I think in order to -- just to ensure that we don't go too late tomorrow, because we are going to stay until we are finished tomorrow, we will commence at 9:00 a.m. So we are adjourned until then.

(Adjourned) Certified to be a true transcript of the proceedings of this hearing, as recorded by me, to the best of my ability. Reporter