

New Brunswick Board of Commissioners of Public Utilities

Hearing

In the Matter of an application by New Brunswick Power Corporation dated June 21, 2002 in connection with an Open Access Transmission Tariff

Delta Hotel, Saint John, N.B.  
December 9th 2002, 9:30 a.m.

CHAIRMAN: David C. Nicholson, Q.C.

COMMISSIONERS: J. Cowan-McGuigan  
Ken F. Sollows  
Robert Richardson  
Leon C. Bremner

BOARD COUNSEL: Peter MacNutt, Q.C.

BOARD SECRETARY: Lorraine Légère

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CHAIRMAN: Good morning, ladies and gentlemen. If I might, I will take appearances to begin the week. The applicant, NB Power Corporation.

MR. MORRISON: Terry Morrison and David Hashey for the applicant, Mr. Chairman, with various NB Power staff.

CHAIRMAN: Thank you. And welcome to various. Formal intervenors, Bayside Power? Canadian Manufacturers and Exporters, New Brunswick Division?

MR. SMELLIE: Good morning, Mr. Chairman. J.H. Smellie and Gordon Nettleton, Canadian Manufacturers and Exporters.

And while I'm at it, J.D. Irving, as well.

CHAIRMAN: Thank you, Mr. Smellie. The City of Summerside?  
Emera Energy Inc.?

MR. ZED: Peter Zed, Mr. Chairman, on behalf of Emera Energy  
Inc. And I'm joined by James Connors and Mark Sidebottom  
who will constitute the Panel this morning.

CHAIRMAN: Thank you, Mr. Zed. And you are here also for  
Nova Scotia Power Inc.?

MR. ZED: Yes, sir.

CHAIRMAN: Thanks. Energy Edmundston? Mr. Gillis, Junior.

MR. ALBERT: Thank you, Mr. Chairman, my name is Richard  
Albert. I'm here on behalf of Mr. Gillis.

CHAIRMAN: And the surname was Richard?

MR. ALBERT: Albert, A-l-b-e-r-t.

CHAIRMAN: Thank you, Mr. Albert. Maine Public Service  
Company? Northern Maine Independent System Administrator?  
Perth-Andover, Mr. Dionne is here, I think is he? Yes,  
Mr. Dionne is here.

Province of New Brunswick DNRE?

MR. BARNETT: Don Barnett, joined by Jim Knight, Natural  
Resources and Energy.

CHAIRMAN: Okay. Thank you, Mr. Barnett. Raise your hand  
when you are about to speak to help the technician in the  
rear.

Province of Nova Scotia Department of Energy? Saint  
John Energy, Mr. Young is here and Mr. Gorman.

MR. YOUNG: Yes, Mr. Chairman, Mr. Young, Dana Young  
accompanied by Jan Carr and Ray Gorman.

CHAIRMAN: WPS Energy Services Inc.? Board Counsel?

MR. MACNUTT: Peter MacNutt, and I have with me Doug Goss,  
Gaye Drescher, Jim Easson and John Lawton, Board Staff.

CHAIRMAN: All right. Mr. Morrison, any preliminary  
matters?

MR. MORRISON: Not at this time, Mr. Chairman. But I  
believe Mr. Zed may have a comment.

CHAIRMAN: Mr. Zed?

MR. ZED: Mr. Chair, I understand that, with the Board's  
indulgence, the Emera Energy Panel will be sworn. I just  
have one correction I noted in our evidence, the Emera  
Energy evidence on page 7.

CHAIRMAN: That's exhibit EEI 1?

MR. ZED: Yes, Mr. Chair. Page 7, line 20, there is a  
reference to an IR-28. And that is actually an NSPI IR as  
opposed to an Emera Energy IR.

CHAIRMAN: Which line was that?

MR. ZED: Line 20, page 7.

CHAIRMAN: Line 20. Okay.

MR. ZED: And, secondly, I thought it appropriate there was

an undertaking we gave at the conclusion of last day's testimony. And I didn't arrange for that introduction, although it's quite welcome.

CHAIRMAN: Yes. Perhaps you should speak to them and bring it with you often, Mr. Zed.

MR. ZED: The undertaking was with respect to testimony that Mr. Whalen had given and a question posed by the Chair asking, I believe, whether or not legislative amendment was required in Nova Scotia before NSPI could enact or seek approval of an OATT tariff.

And while I am prepared to answer it, I thought it more appropriate if Mr. Connors did as VP Regulatory Affairs. He would be quite prepared to speak to that and answer any questions the Board or anybody might have of that issue. So if they could take the stand, we will proceed in that fashion.

CHAIRMAN: All right. As soon as the preliminary matters are over, then that would be -- that would be fine.

MR. ZED: Yes.

CHAIRMAN: Mr. Smellie?

MR. SMELLIE: Thank you sir. Two matters. Firstly, after we rose in November, Mr. Nettleton and I with JD Irving considered the issue of the Federal Energy Regulatory Commission's notice of proposed rule making or NOPR, dated

July the 31st.

And I wrote to the secretary on November the 28th and provided her with 15 copies of what I will call and expanded excerpt from that lengthy document, for the reason that in our view it made more sense and gave better context to the issues that my colleague is going to address with Panel D later today.

The document was also circulated to interested parties. And I have spoken with my friend -- with my friends for New Brunswick Power and they have no difficulty with that document being marked as an exhibit.

And if that could be done, I would be grateful, sir.

CHAIRMAN: Might as well do it now. And my records indicate that should be JDI-6. So that's not the total document, Mr. Smellie. It's just an expanded excerpt?

MR. SMELLIE: Parts 1 to 3, Mr. Chairman, of the FERC NOPR of July 31 of this year.

CHAIRMAN: Thank you.

MR. SMELLIE: The second matter, sir, concerns --

CHAIRMAN: Yes, go ahead.

MR. SMELLIE: -- a response to an interrogatory from New Brunswick Power directed to JD Irving. And in particular it's information or interrogatory 9.

The question, Mr. Chairman, asked for the basis for

certain assertions that had been made in the evidence of Mr. Mosher. And in particular the statement that is referenced is this and I quote, "As well, the rate increases for current self-generators in New Brunswick are expected to be significantly above 50 percent."

We did provide a response in respect of interrogatory number 9, Mr. Chairman. As a result of discussions with my friends for New Brunswick Power, what I wish to tender today is a supplementary response to that interrogatory, with some further and, hopefully, better information concerning the question that New Brunswick Power asked. Again, I have spoken to my friend, Mr. Hashey, about this.

And I gather he has no difficulty with it.

CHAIRMAN: Okay. So that will be exhibit JDI-7.

MR. SMELLIE: Thank you, sir.

CHAIRMAN: Mr. Smellie, that's an expanded answer to which interrogatory?

MR. SMELLIE: It's a supplementary response from JD Irving Limited to NB Power interrogatory number 9.

CHAIRMAN: Thank you.

MR. SMELLIE: That's all I have, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Smellie. Any other preliminary matters?

Just before I ask Mr. Zed to have the Emera -- or

while the Emera Panel is coming up and getting settled, I will go over a couple of other things, if I might.

After this Panel is concluded, then Panel D will be recalled, and we will deal with JDI, I guess, it's 6 or 7, whatever it is. And then we will go on to Panel B after that. Okay.

(MARK SIDEBOTTOM and JAMES L. CONNORS, sworn)

CHAIRMAN: Go ahead, Mr. Zed.

DIRECT EXAMINATION BY MR. ZED:

Q. - Gentlemen, just for the record could you please state your names and your positions?

MR. CONNORS: My name is Jim Connors. I'm Vice-president, Regulatory Affairs for Emera Inc., the parent company of Emera Energy.

MR. SIDEBOTTOM: And I'm Mark Sidebottom, Director of Operations for Emera Energy.

Q. - Now Mr. Connors, before giving a summary of the evidence on behalf of Emera Energy, I wonder if you might respond to a question put by the Chair at the conclusion of last day's meeting.

And the question is basically whether or not any regulatory or statutory change is required to be enacted by the Province of Nova Scotia before NSPI would be able to file an open access transmission tariff?

MR. CONNORS: Yes, I will do that, Mr. Zed. Good morning, Mr. Chair and Commissioners.

Last day you asked whether or not Nova Scotia Power had the ability legally to file its own application for a transmission tariff in advance of the process which the government has presently undertaken in Nova Scotia for policy development.

I think the short answer to the question is probably yes, we could but that it would probably not be prudent that we follow that course.

Under the Public Utilities Act, and I'm sure you are aware of it, the Utility and Review Board in Nova Scotia has a very broad and general supervision of Nova Scotia Power. Indeed it has virtually complete regulatory authority over it.

So that at first blush most of us would think and be of the view that the company could legally present a transmission tariff application and the Board have jurisdiction to deal with it.

Now I think last week when Mel Whalen testified he drew your attention to section 55 (a) of the Public Utilities Act. That was an amendment to the Act which permits third parties by contract with Nova Scotia Power and with the approval of the Utility and Review Board to



wheel power out of the province.

The section however says nothing about wheeling power through the province or wheeling power into the province.

And as a result of that some would raise a reservation and say since it has not been specifically dealt with, perhaps that power is not there. And I believe that Mr. Whalen was raising that kind of a question with you when he testified.

In my own view I would go back to the general overriding and broad power of the Board and still suggest that a good argument could be made to say that notwithstanding that particular section that the Board could entertain such an application.

But the real question, Mr. Chairman, in our mind is would the Board do so? There is a process of policy development under way in Nova Scotia at this point in time whereby the government has in the strategy announced approximately a year ago established an electricity marketplace governance committee.

It is comprised of Nova Scotia Power and a broad array of stakeholders. And it is mandated to give the government advice on a number of topics including transmission tariffs.

The government in the energy strategy also indicated

that upon receiving that report it wishes to give, and I will quote from it, "Policy direction to the UARB to authorize open access transmission."

So my -- our point would be that the government, having set up this process, even if we were to proceed to the Board to file an application for a transmission tariff, we would probably find the Board saying, don't you think you ought to wait till the government process runs its course. And we would have to agree with that.

And so provided the government process is proceeding in good faith and moving along reasonably well timewise, we think that even though the Board probably has the authority to entertain such an application, it would want us to wait. And we think we ought to wait and work with that process.

Timewise I can tell you, Mr. Chairman, that the process in Nova Scotia is moving reasonably quickly. The government announced its policy after virtually a year of consultation.

The Electricity Marketplace Committee which was structured last year has been proceeding along, working very, very diligently, indeed in the last six weeks has had five day-long meetings, is on the verge of sending to the Minister its interim report. And its interim report

deals with transmission access matters within the framework of the energy strategy.

So in summary then, Mr. Chair, my answer to your question is that Nova Scotia Power could probably apply to the Board.

And the Board probably has the legal authority to take a transmission tariff application, but that in the circumstances of the policy development process under way, the prudent thing would be to wait and to work with that policy process as long as it is proceeding reasonably quickly, which we think it is.

CHAIRMAN: Thank you, Mr. Connors. That certainly concurs with my last reading of the Nova Scotia legislation. The only restriction with that Board is in fact a review of the capital expenditures in reference to Point Aconi as I recollect things.

Anyhow so be it. Mr. Zed, go ahead.

Q. - Mr. Connors, I would ask you just to briefly summarize the Emera evidence?

MR. CONNORS: I also wanted to take this opportunity, Mr. Chairman and Commissioners, to thank you for giving us as Emera Energy the opportunity to express our views on the proposed new open access transmission tariff here in New Brunswick.

I wanted to begin though by offering our apologies to you for the nonappearance of our panel on the last day. When we were first called about the possibility of putting a panel forward and helping things flow smoothly on the 27th, we certainly thought that we would be able to do so.

Two of our panel members were involved in another rather delicate matter, but we genuinely thought it would have been concluded by that time and were rather embarrassed to find ourselves on the 27th with it not being concluded. We appreciated very much your understanding last day and your agreement to adjourn until today.

Today however it is even more embarrassing because that matter in which they are involved continues. And it is simply -- it is not an issue of which is more important. It is a matter of these two fellows are working on that matter. And they are the only two people.

And having begun it they are the ones who have got to finish it.

So as a result, Mr. Sidebottom and myself are stepping into the breach. It certainly should go without saying that we will do our best to respond to your questions. But I wanted to first of all apologize to you should our appearance cause any inconvenience to either you or the

members or anyone else.

Mr. Chairman, Emera Inc. is a diversified energy and services company whose market is the northeastern North America. Our three primary subsidiaries are Nova Scotia Power, Bangor Hydro and Emera Energy Inc.

And Mr. Sidebottom and I appear this morning as the panel supporting the evidence filed by the subsidiary Emera Energy Inc.

That company in particular is focused on acquiring and growing energy investments in the northeastern region. It is through that company that we hold our interests in the Maritimes and Northeast pipeline, the Sable offshore energy project, in Emera Fuels which is serving home heating customers here in New Brunswick as well as in Prince Edward Island and Nova Scotia, the Greyhawk natural gas storage project in the state of New York.

We also through this company own Emera Energy Services which is a company active in the northeastern United States under a FERC authorization with regard to the wholesale selling of electricity energy.

And we have other business development activities being carried out consistent with the overall direction to be involved in energy activities in this region.

Mr. Chairman and Commissioners, in the recent Speech

From The Throne in the Province of New Brunswick the government reiterated its commitment to a deliberate and controlled approach to electricity restructuring and market competitiveness.

And at Emera Energy we believe in principle that the electricity market changes proposed by the government together with this new New Brunswick Power tariff are very positive steps. And we want the Board to note our encouragement and our appreciation and our agreement with those general -- as matters of general principle.

We say however that the extent to which the benefits of these actions will flow to customers here in New Brunswick will depend in part upon who participates in the market after it is open.

Participation by potential future competitors of New Brunswick Power will in turn be dependent upon whether the structures adopted for the new market will be fair, nondiscriminatory and not act as unreasonable barriers to entry.

We would urge you to consider that a well-constructed regulatory environment is necessary and vital to enable not only Emera Energy but indeed other potential market entrants to make long-term financial and other commitments to participate in the New Brunswick market.

Now we view -- as we view the application for New Brunswick's first open access transmission tariff, we are quite pleased. There is very, very little that we would take issue with in what has been put before you.

But we do have three matters which we feel are important and which left unaddressed could act or would act as barriers to entry in the New Brunswick market and would work contrary to the policy objectives behind the proposed transmission tariff.

We have presented brief evidence and suggested some solutions to you with regard to those matters. First of all is the initial allocation of transmission capacity. Fair and equitable access to transmission in the New Brunswick market when the market opens for competitive choice on April 1st 2003 will be critical for any new market entrant to participate in the market for a sustained period.

As such Emera Energy supports the use of the FERC transmission allocation methodology whereby all transmission held by New Brunswick Power and not capacity and not backstopped or connected to bona fide third party contracts would be open to an auction process in an open and nondiscriminatory matter.

We make it very clear -- and I want to emphasize again

that this does not include any transmission for which a third party has contracted with Nova Scotia -- or New Brunswick Power as the transmission provider.

Given that this will be the first time a tariff is before this Board for approval, Emera Energy believes that all transmission allocations that derive from the 1998 allocation process should not be preserved unless again they are supported by an existing -- and that would be as of market opening on April 1st 2003 -- unless they are supported by an existing contract with a bona fide third party.

Reservations that New Brunswick Power has made with itself, we would argue or submit are not bona fide and ought not to be protected or preserved from the open process that we advocate and which FERC was the originator of.

We also note that in 1998 New Brunswick Power of course was not subject to your regulatory supervision in this regard. We see that now with the regulatory certainty that your overview brings to the process, together with the changes that the government is proposing, that we believe that new market entrants will indeed then be able to fairly compete for transmission access in a nondiscriminatory environment.



Our second issue is losses, Mr. Chairman. Emera Energy supports the proposal that average system losses should be used for network service. However the existing policy of computing specific monthly path losses for point-to-point service should be continued.

Computed losses by path provide a fairer and more accurate method for determining the impact of a particular transaction on the New Brunswick Power system.

It bears repeating that market participants must have clear price signals when they make transactional or capital investments in the province.

By preserving the present specific path losses methodology, this will continue to send clear price signals to the market.

And finally our third issue is energy imbalance. Emera Energy completely agrees with New Brunswick Power that energy imbalance must be addressed in the transmission tariff. Our concern is that the methodology chosen by New Brunswick Power does not reflect the true cost of supplying this service.

In a truly open market this issue would be resolved by using the posted hourly market clearing price. However in this market proposed for New Brunswick this is not a practical option and is not contemplated under the new

structures proposed by the government.

Emera Energy contends though that the proxy for an open market price now proposed by New Brunswick Power will not fully or properly account for the true cost of that service.

We have suggested and are prepared to engage in discussion today of proposed proxies that we think would more closely reflect the true cost of service for this important service.

So Mr. Chairman and Commissioners, again we appreciate the opportunity to be with you here today. And thank you very much.

CHAIRMAN: Thank you, Mr. Connors. Mr. Smellie.

MR. SMELLIE: Thank you, sir.

CHAIRMAN: Mr. Albert?

MR. ALBERT: No, Mr. Chairman.

CHAIRMAN: No questions from Mr. Gillis, okay. And I presume, Mr. Smellie, that was also -- included J.D. Irving?

MR. SMELLIE: Indeed, sir.

CHAIRMAN: Okay. Perth-Andover?

MR. DIONNE: Saint John Energy will be asking our questions, sir.

CHAIRMAN: Okay. The Province of New Brunswick?

MR. BARNETT: Yes, sir.

CHAIRMAN: Yes.

CROSS EXAMINATION BY MR. BARNETT:

Q. - Good morning, gentlemen. My name is Don Barnett. I'm with the Natural Resources and Energy Department. And I'm joined here by Jim Knight this morning. And I just have a few questions for you. And I also provided Mr. Zed with I think three documents. Earlier this morning he explained to me that you didn't have a problem with the documents and the area I was going to go with that.

And when I get to that line of questions, Mr. Chairman, I do have copies of these for the Board and members of all Intervenors.

CHAIRMAN: Do you want to introduce them now, Mr. Barnett?

MR. BARNETT: Yes, I would if that's your pleasure.

CHAIRMAN: Why don't we do it that way? Mr. Barnett, the first document I have is --

MR. BARNETT: It's a decision of the Board dealing with the Coleson Cove Hearing. And I'm really going to make reference to the last page of that document, sir, which is your decision. It is a matter of public record.

CHAIRMAN: Yes, that's right. I was just going to say it probably doesn't need to be, however, we will mark it and it will be PNB-2.

MR. BARNETT: And the second document, Mr. Chairman, is again taken from the Coleson Cove Hearing. It's a document of the evidence there. And what I'm specifically referring to in this document will be on page 80, under (2.3).

CHAIRMAN: All right. That second document is PNB-3.

MR. MACNUTT: Mr. Chairman, perhaps Mr. Barnett could clarify for us, are there three documents he is introducing altogether or just two?

MR. BARNETT: There are three documents, Mr. Chairman.

MR. MACNUTT: Thank you.

MR. BARNETT: There should be another one. Again which is another section. It's part of the business plan. I --

CHAIRMAN: Your assistant Mr. Knight is now passing that out. Perhaps you had better wait for him to complete his duties. Mr. MacNutt?

MR. MACNUTT: Yes. The reason I'm asking a question, Mr. Chairman, is I have a document handed to me by Mr. Knight.

It's an extract from the transcript proceedings before this Board on January 28th 2002. And it runs pages, reading between the lines, 710 through to 725. Which document --

MR. BARNETT: I'm not sure. Let me just repeat the three documents. The first document dealt with the Board's

decision on the Coleson Cove. The second document deals with -- should be dealing with the evidence filed by NB Power dated July the 12th, volume 1 of 1. And there is -- the document contains about eight or nine pages, Mr. MacNutt through Mr. Chair.

CHAIRMAN: Yes. That has been given the exhibit number, Mr. MacNutt, of PNB 3. The first one you referred to and Mr. Barnett keeps referring to it as our Decision but I don't know -- but anyhow, it is from the transcript of January 28th 2002. That is PNB 2. It really need not be marked but for convenience sake we have marked them here today. And PNB 4 will be --

MR. BARNETT: Yes. So PNB-4 is again taken from the evidentiary part of the Coleson Cove hearing. And it deals specifically -- I have just put the front page for reference but it deals specifically with appendix C of volume 1 of direct evidence, and deals with NB Power's business plan and financial projections.

CHAIRMAN: So there is really just one page which is 12 from that --

MR. BARNETT: It's -- page 12 is the page that -- to try and give some sort of continuity there without reproducing the whole document, I -- but it's page 12 of that document that I'm specifically focused on, sir.

CHAIRMAN: Okay. And that one will be PNB-4. Okay, Mr. Barnett. Go ahead, sir.

Q. - Okay. Mr. Connors, I think I heard you explain the relationship between Nova Scotia Power, Emera Energy and Bangor Hydro Electric Company. They are all sister companies, subsidiary companies of Emera Incorporated, I believe?

MR. CONNORS: That's correct.

Q. - And you, sir, are the Vice President of Regulatory Affairs with Emera Inc., with the parent company, sir?

MR. CONNORS: Yes.

Q. - And you serve capacity -- any other capacity with Emera Energy, Nova Scotia Power or Bangor Hydro?

MR. CONNORS: My responsibilities extend to all of the regulatory affairs in which any of the Emera Inc. subsidiaries might find themselves in.

Q. - And that is in Canada and State side, I understand --

MR. CONNORS: Correct.

Q. - -- from your c.v.?

MR. CONNORS: Yes.

Q. - And you have been with the Emera Inc. since June of this year, I believe?

MR. CONNORS: Correct.

Q. - Mr. Sidebottom, you have been with Emera Energy Inc.

since 2002 but served in former capacities with Nova Scotia Power, is that my understanding?

MR. SIDEBOTTOM: That's correct.

Q. - And if I read it right you have been with Nova Scotia Power and Emera since 1988?

MR. SIDEBOTTOM: That's correct.

Q. - And your current capacity as Director of Operations of Emera Energy Inc. you have been in that position since this year. You started in 2002, sir?

MR. SIDEBOTTOM: Yes, that's correct.

Q. - What month was that?

MR. SIDEBOTTOM: That would be June.

Q. - June?

MR. SIDEBOTTOM: Of this year.

Q. - The same time frame as Mr. Connors?

MR. SIDEBOTTOM: Yes.

Q. - Thank you. So, Mr. Connors, you have a knowledge of the affairs of all three subsidiary companies as well as Emera Inc., is that fair to say?

MR. CONNORS: I have some knowledge, yes.

Q. - What you have acquired since you joined the company --

MR. CONNORS: Indeed.

Q. - -- I suspect, or what you may have known on a peripheral matter before that.

One of the subsidiary companies is Bangor Hydro. When did Nova Scotia Power -- or rather Emera acquire -- Emera Inc. acquire Bangor Hydro?

MR. CONNORS: I believe that that acquisition or merger was finalized in the latter part of 2001.

Q. - So before you -- your coming to Emera?

MR. CONNORS: Yes.

Q. - Now in your role that you now play with Emera Inc. and Emera Energy and the other two sister companies, you have an awareness of what is going on with all three companies?

MR. CONNORS: Well that's a pretty broad question, Mr. Barnett. It might be better if you focused in on --

Q. - Perhaps I will bring it a little closer then.

MR. CONNORS: Right.

Q. - I think you specifically --

MR. CONNORS: I have been on quite a learning curve, so I'm -- there is a lot more to learn.

Q. - Well we will get into that a little bit further on when I -- I'm going to go to the direction of the second tie, and my understanding is -- without wanting to get into issues which are propriety and confidential in nature, just talk in generalities about that.

MR. CONNORS: Sure.

Q. - But I'm not -- I'm just not quite ready to get there yet.



I will be going there though.

Now in your opening statement and from the Emera evidence, you cited a number of reasons why this Board should in fact support the view in its decision put forward by Emera Energy and supported by Nova Scotia Power as to why the transmission tariff that currently exists today should not apply on a go forward basis for anything other than what has third party assignment to it. You cite that it was not approved by the regulator. You cite at that point in time the New Brunswick government was not clear -- this appears -- I'm sorry, in exhibit EE1 on Emera page 7, is what I'm drawing from.

I will just give you a moment to turn that up. Do you have that, sir?

MR. CONNORS: Yes, I do.

Q. - Okay. I am just encapsulating three key points in the six or seven bullets that appear there. One, it was not approved by the Regulator, two, the New Brunswick government at that time was not clear on restructuring, and, three, there was regulatory uncertainty.

Now that's the position of Emera today and presumably that was the position of Emera Energy in 1998?

MR. CONNORS: Fundamentally the 1998 tariff is not an open access transmission tariff. So as opposed to what is

being presented now the tariff back in 1998 was a through and out tariff. It did not have in provisions and so is a very different creature from what is being dealt with today. And the further difficulties we would have had with it of course are the points that you have outlined, which is the lack of regulatory oversight, the discriminatory pricing which you didn't mention, but the fact that those who are wheeling through paid a rate approximately 40 percent higher than those who were wheeling out of the province, together with the other points which are set out in the evidence, essentially make that a very, very different creature from what we have here.

So I don't think you can draw the analogy between the 1998 tariff and say, well that was our first open access tariff and therefore whatever happened under that should be grandfathered today. That was a materially different type of tariff from the kind that you are contemplating bringing into effect here today.

Q. - I understand your position on that, Mr. Connors.

Nevertheless a number of parties did in fact raise issue, and I think Hydro Quebec in particular, and if you want to turn it up, I don't think it's necessary, but in Exhibit A-5, volume 2 of tab 2, there is a letter from Hydro

Quebec expressing its concerns in regards to that 1998 tariff.

To your knowledge, Mr. Connors, did -- I'm not too sure Emera Inc. was actually a corporate entity, that name existed at that time, so did Nova Scotia Power take any similar action in identifying their concerns to NB Power by way of the written word, e-mails or any means of communication?

MR. CONNORS: As far as I have been able to determine, no, Nova Scotia Power did not. But that as we look at the letter which Hydro Quebec filed we would agree with the issues raised in that letter as being issues that go very much to the heart of that tariff in 1998, and --

Q. - Nevertheless your forefathers did not raise it to that level in communication with NB Power?

MR. CONNORS: No.

Q. - Subsequent to that period has Nova Scotia Power or Emera Energy sought access under the tariff as it exists today?

MR. CONNORS: Yes, we have.

Q. - Okay. Under what circumstances did Nova Scotia Power or Emera Energy make that decision, a tariff that they didn't agree with and yet they sought access to use it?

MR. CONNORS: The applications to which you refer I think are appended to one of the information responses filed by

Emera Energy, and in my understanding two applications were made during the past year to attempt to obtain some capacity.

One of the changes which has occurred of course is the rate. New Brunswick Power eventually changed its position with regard to the rate to bring the two rates into alignment.

So -- but if you are asking does that action of application, should that be interpreted as happiness on our part with all of the terms of the presently existing out and through tariff, the answer is no, it doesn't.

The commercial reality is that we in Emera Energy felt we had some opportunities to export some power, and that this tariff presently is the best opportunity. So we wanted to try and do our best to work within that framework.

But that's not the same as saying is this the best framework for the market. I think the best framework for the market is what is being discussed in this hearing today in terms of contemplating the new tariff that is being put before the Board.

Q. - Nevertheless, just to put this in order, Nova Scotia Power, Emera Energy did not raise this concern over -- their concerns over the 1998 tariff?

MR. CONNORS: Emera Energy would not have existed I believe in 1998 and I think so far as I have been able to determine, and you will appreciate obviously some people have come and gone, no formal objection -- I'm not aware of any kind of objection being taken back then.

Q. - Thank you. I think I can leave that part there.

Referring to your evidence in Exhibit E-1, page 8, lines 15 to 16 --

MR. CONNORS: Yes.

Q. - -- I would just like you to -- and I quote, it says, "An appropriate independent body should oversee the process or at a minimum the participants should be able to appeal rulings to the Regulator."

I would just like you to explain to me and to the Board what you mean by an appropriate independent body?

MR. CONNORS: Well we mean someone who would act at arm's length from New Brunswick Power. It could be the Regulator here, it could be someone to whom the Regulator here delegates or directs that authority, or it could be a third party in effect retained by New Brunswick Power but retained on the basis that it would act independently.

Q. - Would an independent system operator fit that category?

MR. CONNORS: Well at this point in time if you are asking should the transmission company that seems to be

contemplated make that decision, not at this point.

I mean at this point our essential issue here is with New Brunswick Power which is still one corporation purporting to grandfather contracts it has made with itself. Now leave aside the issue as to whether you can make a contract with yourself, but the notion that NB Power Transmission with its transmission hat on should rule on the rights of third parties relative to these reservations that it has made itself, makes us uncomfortable.

And we say that with all due respect to the fine people who work at New Brunswick Power. This is an issue of how it should look, not how we expect them to act. They are good people. But it's an issue of how it should look and it needs to look better. It can be better. And it can be better by just having some independent party hired to oversee that process.

Now at such time as there is a truly independent system operator then that issue goes away.

Q. - As this appropriate independent body then does Emera see this as a means of levelling the playing field for all market participants?

MR. CONNORS: I think that that's a fair way to put it. I mean to take the analogy a step further, we see right now

some of the gates to the playing field being locked, and we see that putting an independent person in there will help open those gates. So yes, we agree.

Q. - In that context are you aware of New Brunswick's energy policy that was announced through its White Paper and I believe appears in this hearing as Exhibit JDI-3?

MR. CONNORS: I have read the White Paper. I have not read it in the context of preparing for this application. So I have certainly not a detailed familiarity with it. So if there is a particular point I will do my best to respond to it.

Q. - Thank you for that. The point I really just want to focus on is the degree of market opening in New Brunswick. Are you familiar with that, you or Mr. Sidebottom?

MR. CONNORS: Yes. Well let me see. My understanding is that the market is proposed to open firstly to the wholesale customers and then that there is also to be retail access for customers who connect to the transmission system at 750 and above.

Q. - If I would suggest to you that those both happen at the same time subject --

MR. CONNORS: Oh yes, I agree. Yes.

Q. - All right. And from the -- I'm sure you are probably much more familiar with the Nova Scotia energy strategy.

In terms of the Nova Scotia energy strategy, and I put this question to Nova Scotia Power, but I would just like to try the same question with you, presumably I will get the same answer.

MR. CONNORS: Well we will find out, I guess.

Q. - The size -- the Nova Scotia energy strategy I believe proposes to open up the wholesale market in Nova Scotia in around about 2005?

MR. CONNORS: No. The strategy talks in terms of -- it sets out a series of objectives and then it says, here are actions which must be taken in order to achieve these objectives. And it directs that those actions will occur within a timeframe that is bounded by 2001 on the low and 2005 on the high.

So it shouldn't be interpreted as saying for example we will not have a transmission tariff to 2005. We are way ahead of that schedule right now in Nova Scotia. I have already referred in my opening to an interim report that is going to deal with that going to the Minister. So, you know, I don't think it is going to take to 2005 to get that in place.

But all of these actions are contemplated happening within that four or five year time span.

And then the policy says it looks beyond 2005 and it



talks about certain actions taking place then.

Q. - So your understanding then the -- your prognosis is that an open access transmission tariff in Nova Scotia may be in place prior to 2005 and that's an outside date, is that what you are suggesting, Mr. Connors?

MR. CONNORS: I'm suggesting it's an outside date. And just so that you understand the process, the electricity marketplace governance committee, I sit on that committee as an alternative to Chris Huskilson, the chief operating officer of Nova Scotia Power, and we have told that committee that we would like to have a transmission tariff presented to the utility and review board by the end of next year.

Now the process within the committee is that the committee has met, considered a number of issues around it, is presenting an interim report, and the report is being finalized this week and will then go to the Minister.

I have asked the committee and they said I can tell you that it deals with transmission matter and it responds to the policy directions. I'm not at liberty to go into the actual recommendations because it has got to go to the Minister first.

Our assumption is the minister will give it a

reasonably quick turnaround, in other words we don't expect it to be delayed there, so that at some point in the coming year we would expect the minister to then give policy direction to the UARB and ourselves at least through Nova Scotia Power able to present a transmission tariff. And then we are into the usual scenario of, you know, how long will it take to get it scheduled before the Board and how long will it be heard.

But if you step back and you said, how does that compare for example with New Brunswick, remember, Mr. Barnett, the first time an open access transmission tariff was talked about in this province I think was when the Minister of Natural Resources and Energy stood up in 1997 and said, we will have one of those at some point, and then published a policy paper that talked about energy in New Brunswick beyond 2000, I'm paraphrasing the title.

But it's effectively taken you from 1997 to today to get to the point where we are talking about a real, you know, transmission tariff that has in, out and through service in New Brunswick.

So Nova Scotia, while we may have started a little bit later, I think we are making good progress in catching up, and I very much expect that we will be to our Regulator sometime next year with this.

Q. - Just a follow-up question emanating out of what you just said. Although you don't agree with it there was in fact a tariff for wheeling through and wheeling out of New Brunswick in 1998, is that not correct?

MR. CONNORS: When we use the phrase open access transmission tariff I think most of us are, whether we like it or not, relating back to how FERC has described that, and the FERC notion of an open -- what FERC was mandating in Order 888 and beyond I think was to have open and non-discriminatory tariffs. Open meant access to the wholesale market in, out and through.

In New Brunswick with the tariff in 1998 as I understood it -- I mean it says it's out and through. It doesn't say anything about coming into New Brunswick or even serving the New Brunswick load.

So it doesn't meet the criteria, the basic criteria of a FERC open access transmission tariff.

It was obviously an important first step towards that, Mr. Barnett, and I wouldn't argue with that for a moment.

But what I'm saying to you is you have been engaged in a process that started in 1997 and is still ongoing now to get you ultimately to the point of having an open access transmission tariff.

And so I'm saying to that -- and I'm not even

questioning the length of the process. All I'm saying is respect that we too in Nova Scotia need a little bit of time and perhaps not as long a time, but some time to make sure everybody understands what we are doing and to make sure that we are doing it right.

And that's why Nova Scotia Power has asked that there be some transitional period that would recognize that we are all moving in sync here. We don't have a FERC that is able to control the timetable for all of us. We are different from province to province.

Q. - I understand that. The energy strategy does say even if Nova Scotia does meet the timetable of end of 2003 and files something with the Provincial Regulator, the energy strategy refers to the degree of opening up of the Nova Scotia market. If my memory serves me right, I believe it's opening it up to six municipal utilities or wholesale access and wholesale access alone. Is that your understanding, Mr. Connors?

MR. CONNORS: That's not quite correct, Mr. Barnett. First of all, it is opening it to the entire wholesale market which consists in Nova Scotia at this point of those six municipal utilities.

However, the independent power producers producing renewable energy will also have the opportunity to market

directly to retail customers.

So there is both the wholesale market is being opened in its entirety, plus there is a limited opening of the retail market to sell a particular kind of product.

Q. - And just so I understand, those are for in-province generators, self-generation in the Province, what you are telling me will be able to enter into wheeling within the province to other customers?

MR. CONNORS: Yes, for renewable energy.

Q. - Yes. But as far as access from outside the province to other customers, it will be at the wholesale level which is, as it sits today, the six small municipal utilities?

MR. CONNORS: Sure, consistent with the FERC notion of openness, yes.

Q. - I thank you. Now, Mr. Connors, in your role and responsibility for regulatory affairs, have you been following, or are you aware that NB Power has an application before the National Energy Board respecting a second tie?

And I don't want to get into the -- any details, confidential discussions going on between Nova Scotia Power, Emera Energy and New Brunswick Power, so I'm just going to stay at a high level.

MR. CONNORS: Yes, Mr. Barnett, I'm aware of that

application.

Q. - Are you aware of the project size that's proposed that's before the National Energy Board?

MR. CONNORS: In general terms, yes.

Q. - So if I were to suggest to you it's of the order of 300 megawatts, you --

MR. CONNORS: Oh, yes. Yes, I would agree with that. I thought you were going to get me to a higher level of technical specifications.

Q. - I don't intend -- I don't intend to go any further with that.

Now my understanding is, and again keeping it at a high level, that Emera Inc., through Bangor Hydro has certain rights on the other side of the border?

MR. CONNORS: Yes, that's correct. And those are through Bangor Hydro. Bangor Hydro essentially has the rights, if I can put it that way, to the development of the second tie line within Maine.

Q. - And there is a relationship between the transmission system that is being proposed in New Brunswick, and the transmission system that would take it from the Maine, New Brunswick border?

MR. CONNORS: Well if this -- absolutely. If this could ever actually occur, those two lines would meet and it

would provide for the transmission of a second line from Canada down through into the United States through Maine and New Brunswick.

Q. - Are you able to provide this Board with general information in terms of what is the status of Bangor Hydro's application before the State Regulator?

MR. CONNORS: Yes, I believe I can.

Q. - Could you go into that for me, please, sir?

MR. CONNORS: The notion of a second or the idea of a second tie line actually goes back within Maine to the late 60s, early 70s. I came across some documents dealing with the formation of MEPCO which involves the three major Maine utilities of which Bangor was one of them back at that time. And they were talking about their commitment to a second tie line. And that if nothing else should tell you the issues or the difficulty, the challenges faced in turning that kind of thing into a reality. Because here we are basically 30 or 40 years later and it still hasn't occurred.

I have a general familiarity that beginning about ten years ago Bangor Hydro, back in 1992 made a further effort to have the line, the tie line, approved. It involves environmental and other approvals by both levels of government, the Maine government through several

regulatory bodies, and also from the Federal U.S. government.

It has been a very challenging process. The process continues. There have been some unfavourable regulatory rulings along the way. In summary we have received a number of the permits but not all of the permits. And because of some of the difficulties and challenges we have currently decided to withdraw several of the permit applications, rather than have them in effect rejected by the regulatory body concerned.

There is still ongoing a system impact study on the proposed second tie line within the United States. That's not expected to be finished for some period of time. And it will be that that will ultimately tell us what the capacity or capability of that line will be with reference to its fitting in with everything else.

Now at the same point, our engineers in the course of the past year took a look as well at the existing tie line. That tie line as you know is limited to 700 megawatts. But there is a -- there is an understanding that it was built to a capability of a thousand megawatts.

But that the limitation at 700 was put in some years ago in circumstances which at least our own engineers believe have changed.



And that as a result, we have also requested a system impact study of the possibility of increasing the limitation on the existing line from 700 to a thousand.

Now as you probably know, the process for doing these system impact studies through ISO New England and through NEPOOL is one where you take your place in the queue and you wait your turn. And it takes some time.

Our view right now as a company is that we think it very important to determine, first of all, can we increase the capacity on the existing tie line. And if that is so, and depending on the cost associated with doing that, that may become then a much more viable option than continuing to pursue the second tie line at this time.

So where we are process wise is we have (a), are in the process now of withdrawing some of those applications so that they don't get dismissed and we would thereby be prejudiced in the long term. Secondly, we are moving along with the system impact studies on both facilities. So that, thirdly, once we have the information from that we will make some business decisions as to which course we want to press in future.

And this is all against the backdrop of having spent huge sums of money, millions of dollars to date on this process, and it having taken, at least the current one, a

decade. So we are trying to figure out what is the best way forward.

Q. - So if I can capsule that, Nova Scotia Power, Emera Energy are supportive of increasing transmission capacity, be it through a new facility or upgrade work on the existing facility. Is that correct?

MR. CONNORS: Yes. In this regard it's Emera Energy and, of course, and Bangor Hydro.

Q. - Okay. And do you have any prognosis on timing in terms of when that may come to fruition, whether it's a second tie or some changes to the existing system?

MR. CONNORS: No. I think that's -- that's exactly the problem, Mr. Barnett. It has been, you know, it has been discussed in Maine going back, as I said, to the late 60s, early 70s, when MEPCO was formed. That was one of the purposes of forming MEPCO, to build this second tie. Bangor has been at it now for ten years.

And of course we have been at it since we, you know, merged with Bangor last year. And it's a slow, challenging process. And I don't think anyone could predict when and if a second tie line would be built.

My other point though to you was that our view on the existing tie line from an engineering point of view is that, you know, it may be capable of having the limitation

increase. And if that's the case, that may change the business case for the second tie line. So we are -- that's why we are pursuing both of those options at this point. I hope that's helpful.

Q. - Just to finish. My understanding is the letter that's in evidence in this hearing that Nova Scotia Power was seeking -- and maybe Emera Energy, were seeking 300 megawatts in transmission capacity if in fact the Board were to make a decision that that would be available through some bidding process. Is that correct?

MR. CONNORS: The letter to which you refer was applications that Emera Energy made to NB Power. And of course NB Power denied those. And I think there was a request as well to say, well, do a system impact study. I don't think NB Power has agreed with that.

But our view would be here, Mr. Barnett, that if the Board takes the contracts which are not tied to bona fide third party contracts and says we are not grandfathering those, we are going to put those through the kind of open auction process that FERC contemplated when it began to create these open access tariffs, then Emera Energy will have to take its chance with any other interested party and enter into that bid competitively. And, you know, we will have to just as the -- at that point New Brunswick

Power generation will have to be competitive as well.

But that in theory I mean the White Paper here, and I think the policy thrust behind this is that the opening up of this to competitive forces at the end of the day should be an improvement for the -- or should improve the situation for the ultimate end users.

Q. - Thank you. Now I'm just going to move --

CHAIRMAN: I think this is probably a good opportunity for a 15 minute break.

MR. BARNETT: Thank you. Thank you, Mr. Chairman.

(Short Recess)

CHAIRMAN: Go ahead, Mr. Barnett.

Q. - Gentlemen, I just have a few more questions in completing my cross examination.

Can you advise me, Mr. Connors, in your research since joining Emera, are you aware that Emera Energy or Emera Inc. or Nova Scotia Power, I believe one of the two former, intervened in any manner in the Coleson Cove hearing?

MR. CONNORS: I'm afraid I don't know. I didn't think that we had.

Q. - If I were to suggest --

MR. CONNORS: You may -- if you suggest otherwise I have no reason to doubt that.

Q. - If I suggest to you, subject to check, that Emera did in fact intervene informally in the process, the Coleson Cove hearing?

MR. CONNORS: I wouldn't doubt that for a moment.

Q. - So it is perhaps unfair of me to suggest did either of you two gentlemen followed the proceedings.

You, Mr. Sidebottom, did you follow any of the proceedings with the Coleson Cove hearing?

MR. SIDEBOTTOM: I'm only familiar with the information that we received this morning.

Q. - Okay. Perhaps we will turn to that. And what I would like to take you to is -- I believe it is exhibit PNB number 2, Mr. Chairman, which is a transcript of the decision.

And I would refer you to the last page if I may of that document there. And I will just read it into the record, where it reads in a quote that "The Board is of the opinion that an equity partner for the capitalization of the project is not required."

And the recommendation reads "The Board will recommend to NB Power that refurbishment of the Coleson Cove generating facility proceed as proposed in the evidence."

Do you see that, Mr. Connors?

MR. CONNORS: Yes.

Q. - And as far as you are aware that is the decision of the regulator that you appear here before today?

MR. CONNORS: Yes.

Q. - Thank you. Now if I could take you to the second exhibit that you were handed this morning, Mr. Chairman, that was circulated by the Secretary. That is PNB number 3.

And if I could take to page 80 of that. And I would like to refer to the second half of that paragraph under 2.3, "Interconnection Opportunities" where it reads "The benefits of interconnection export sales have always been significant to NB Power. Rates to New Brunswick customers are up to 15 percent lower than they would be if NB Power did not have opportunity for export benefits."

Do you see that?

MR. SIDEBOTTOM: Yes, I do.

Q. - You have no reason to quarrel with those numbers?

MR. SIDEBOTTOM: No, we don't.

Q. - And if I can take you to the third exhibit which was numbered PNB number 4. And if I can refer you to page 12 of this excerpt. And the fourth paragraph from the top under "Gross Margin - Out of Province."

And it reads that "Out of province margins follow a similar pattern, declining from 160 million in 2001/2002 to a low of 95 million in 2004/05, then increasing to

154 million in 2008/09. The gross margin percentage is improved by the end of the projection, reflecting NB Power's increased competitiveness. Fuel costs decrease as heavy fuel oil is replaced with Orimulsion and Point Lepreau's capacity factor improves."

To the best of your knowledge you have no reason to quarrel with those numbers there?

MR. SIDEBOTTOM: No, I don't.

Q. - Do you agree that most of the projected out of province revenues, the margin that's referred to there on page 12 of 154 million in 2008/2009 would come from New England, from the New England market?

MR. SIDEBOTTOM: It doesn't specifically say so here. There are a number of paths through and out New Brunswick. And so reading this it is hard to tell exactly where they gain their margin.

Q. - But based upon your knowledge -- and I think we have discussed it with other witnesses -- that a substantial part of that revenue does come from exports into the New England market?

MR. SIDEBOTTOM: Yes. There are statements of that, yes.

Q. - And is it not fair to say then that it is reasonable to conclude that projected economics include access to transmission capacity?

MR. SIDEBOTTOM: I would say that yes, you would require an agreement with parties or parties that would hold transmission access to garner access into other markets, yes.

Q. - And that the reservation capacity that NB Generation or NB Power now as it is today holds is important in that regard?

MR. SIDEBOTTOM: Well, I don't know if I could specifically get to that point. The reservations that are held by NB Power, that is only one party that could, through an open access tariff bidding process, hold those rights.

In an open and efficient and competitive market you will have an opportunity to engage with generators and transmission right holders to find entrance into markets.

And that is conceptually the efficient market.

Q. - Nevertheless is it in your opinion fair to assume that NB Power in its application to this Board for the Coleson Cove Refurbishment Project, that they presumed a gross margin on export sales which would have been built into the economics of the Coleson Cove project?

MR. SIDEBOTTOM: It -- from reading this they are assuming that there is an export margin deemed in this business case, yes.

Q. - And based upon the Board's approval of that application



is it fair to assume that the Board drew the similar conclusion?

MR. SIDEBOTTOM: I could not say that, no.

Q. - Now hypothetically -- and I will treat it as a hypothesis here -- if the transmission rights -- you wanted to say something, Mr. Connors?

MR. CONNORS: No, no. I'm just saying let's take our time and listen to this hypothetical so we understand it.

Q. - That's fair. If the transmission rights were to go to an open season, which I think is what you propose in your evidence, I believe, NB Power or NB Genco, as the government has indicated may exist after April 1st, loses access to this reservation that it currently has that you would like to have access to through an open season, is it not reasonable to assume that the project export gross margins are reduced, and then potentially the economics of the Coleson Cove Refurbishment Project change?

Do you want me to repeat that for you?

MR. SIDEBOTTOM: No. If the transmission rights are put into an open season and they are not successfully gained by New Brunswick Power, there would be a party that would have those rights.

And through an efficient and effective market you would have a generator who has, I'm assuming here, a

competitive product looking to get to a market. And they would strike a deal between the person or the entity that holds the transmission rights and the generator and thus would get to a market.

Q. - So in your view then it does not necessarily change the economics of the Coleson Cove Project that was put before this Board?

MR. SIDEBOTTOM: It is hard to determine whether that would cause the economics to change. The conditions of an open market would allow the transmission right holder and the generator to come to a position which says they can find a sale for the cost-effective power into the market. And if this case is the New England market they would do so.

MR. CONNORS: Just one moment, Mr. Barnett.

Q. - You have nothing more to add to that answer?

MR. SIDEBOTTOM: No.

Q. - Okay. Is Emera Energy aware that as a result of the PUB decision, NB Power has made substantial financial commitments to the Coleson Cove Refurbishment Project as it moves ahead?

MR. SIDEBOTTOM: Yes, we are.

Q. - You are? Okay.

MR. CONNORS: And to be clear, Mr. Barnett, we are not challenging NB Power's ability to grandfather or seek to

preserve capacity reservations that are tied to third party contracts, not for a moment. But to the extent that they are not tied to third party contracts then we would say you can't have it both ways.

An open access transmission tariff requires that there be open access. And you can't have a transmission provider purporting to say on the one hand we have an open access transmission tariff but we are going to tie up all of this capacity ourselves. And that is not the structure at least that FERC has created.

And while we don't want to be slavishly adherent to what FERC and the Americans want, at least the way the market has developed is that we have all looked at that generally as the model.

And the model is capacity that hasn't been tied to third party contracts gets put on the market. And then everybody has a fair and competitive opportunity to bid on it.

Q. - I hear you, Mr. Connors.

MR. CONNORS: But if you decide as a policy reason that there will be an impact on Coleson Cove for example, I'm only spec' -- I don't know the business case for Coleson Cove.

But if you decide that there is then obviously that is

something you have got to put in the balance as to whether or not you want an open access transmission tariff.

Q. - I guess that is one option. So if in fact the economics of a project that has substantial capital expended to date on a move-forward basis, that has been recommended by this Board to NB Power's board of directors, then in fact there could be significant impact on the economics of that project, if in fact it was relying on the export market for part of the output from that refurbished facility?

MR. SIDEBOTTOM: What I was saying in my last statement was that if they are cost-effective generator they will engage in striking contracts with the transmission rights owner. And the effective and efficient market conditions will allow that generator to get to market. And that would be a characteristic of a functioning open access tariff.

Q. - So just so I understand, if in fact Coleson Cove refurbished is the generator of choice, that will find its way to market irrespective of who owns the transmission rights?

CHAIRMAN: Mr. Barnett, I am going to ask you to go on to another subject matter, because this in my opinion, and I think shared by my fellow Commissioners, is so speculative.

I mean, what if Point Lepreau is not refurbished?

Then does the same speculation hold true that you are talking about? I just don't see how that impacts on what we are about here today.

MR. BARNETT: I will just wrap it up, Mr. Chairman.

CHAIRMAN: All right, wrap it up. Besides you will give Mr. Connors another opportunity to state Emera's case. We have had that three times. So that --

MR. BARNETT: Well, sir, I guess the concern to the department and the Province relates to a project which has its economics evaluated, a decision is made, and things are moving forward on that basis.

And the Province shares a concern that loss of the reservation by NB Power, NB Generation could carry economic impact on that project, sir. But that may be for argument.

CHAIRMAN: If NB Transmission makes more money off it then that stays with NB Transmission. There are a whole pile of things. This is very speculative.

MR. BARNETT: I will leave that and maybe save that for argument, sir.

CHAIRMAN: Okay. Thank you.

MR. BARNETT: I think that concludes my questions, Mr. Chairman. Thank you, Panel.

CHAIRMAN: Thank you, Mr. Barnett. Saint John Energy, would

you like to come forward, sir? Mr. Gorman, are you going to ask these questions?

MR. GORMAN: Yes, I am, Mr. Chairman.

CHAIRMAN: Good. Thanks.

CROSS EXAMINATION BY MR. GORMAN:

Q. - Thank you, Mr. Chairman. Gentlemen, my name is Ray Gorman and I will be asking the questions this morning on behalf of Saint John Energy.

Many of the questions that we had planned to ask are very similar to the ones that you have -- that have just been put to you, so I will apologize to the Board if we ask something that has already been asked and I will attempt to do this in as short a manner as possible and not to repeat.

Firstly in respect to Mr. Barnett's question, and I refer you to page 8 of your submission, and you were proposing that an appropriate independent body should oversee the process.

I understand that this is not an exhibit but that the market design committee report considered that an independent system operator should be established that would independent from NB Power.

And is that what you were -- is that what you are getting at? Perhaps you could expand on that.

MR. CONNORS: I believe in this section that we are talking about the process that would take place with the initial allocation of capacity, and if at the time that takes place in effect we still have New Brunswick Power as one company, we are suggesting that issues around that need to be dealt with by someone independent of New Brunswick Power. That's all we are suggesting.

Q. - Okay. Are you familiar with the market design committee report that suggested an independent entity?

MR. CONNORS: If we had a truly independent entity then that would I think satisfy -- that would satisfy the requirement.

Q. - Okay. So would you agree then if they implemented -- the market design committee recommended that it be implemented as a functionally separate Transco business and under separate corporatized accounts from the rest of NB Power, would that -- I guess would that satisfy your concern?

MR. CONNORS: I think at this point, particularly given that there are issues around what contracts should or shouldn't NB Power hold onto, that the most open and transparent process would be to have a truly independent third party available to in effect arbitrate or oversee that. So the answer to your question is no.

Q. - If the system operator is independent of the transmission

company is that sufficient to satisfy the concerns that you raise?

MR. CONNORS: Yes, I believe it would be.

Q. - Thank you. When you were giving your evidence earlier you indicated that Emera was not in existence as a corporate entity in 1998. When did it come into existence?

MR. CONNORS: I was speaking particularly of Emera Energy --

Q. - Yes.

MR. CONNORS: -- and I can't give you the specific date, Mr. Gorman. I would be happy to file that afterwards through Mr. Zed.

Q. - Thank you. Would Nova Scotia Power have been the predecessor?

MR. CONNORS: Originally Nova Scotia Power was a Crown corporation that was privatized approximately ten years ago. Then at some period after that there were some other amendments put in place and a holding company was created. That became Emera Inc. Then with the gas and oil opportunities we began to get into these other businesses and at that point eventually created Emera Energy. That's the short form of what has happened corporately.

Q. - In 1998, and I would refer you to page 5 of your evidence, and it's a response to an interrogatory, and



under -- page 5 response (b), about halfway down, it says subsequent to the opening of the transmission system a 60 day period was used to allow customers to request transmission service on the remaining available capacity.

Would Emera or its predecessors have been invited to take part in that process in 1998?

MR. CONNORS: We have tried to make some inquiries internally. The company -- the relevant company at that time would have been Nova Scotia Power.

And when you say invited, I'm -- we are simply unable to confirm or deny that the company was invited or -- in the manner in which you suggest. I mean clearly there was some kind of publication of the event and my expectation would be that Nova Scotia Power would have known about that. But in terms of saying anything more precise than that, we can't.

Q. - Okay. That's fair. Being aware of the process at that time did you participate in the opening in any way?

MR. CONNORS: We didn't participate in the process, no. And I think I have already in response to Mr. Barnett explained issues around that.

Q. - I understand the responses that you gave, but I don't believe he did ask you if you participated. He asked if you had sent a letter similar to one that was sent by

Hydro Quebec. But you did not participate?

MR. CONNORS: No, we didn't bid.

Q. - And your basic position then is that you do support the general principle of preservation of contracts that are in existence prior to the opening in April of 2003 as a general principle?

MR. CONNORS: Bona fide third party contracts, yes.

Q. - Turning to another area of your evidence, and I would refer you to page 8 and forward, dealing with the energy imbalance charges. Emera has made some proposals for establishing charges that were different from NB Power's proposal. Could you just explain how your proposal would differ from NB Power's?

MR. SIDEBOTTOM: Certainly. Energy imbalances are due to the mismatch between the scheduling of generation and actually delivery of power in the next day. And there is always some form of energy imbalance across the system present at all times.

And what Emera Energy has issue with is the proxy used for the energy imbalance. The one chosen, which is related to a number 2 fuel burned in a combustion turbine creates a very high cost replacement energy and thus a high proxy price.

When we take a look at the amount of time that a

combustion turbine is actually used to supply energy imbalance, or potentially could, in New Brunswick, it seems that is not the probable source of replacement energy.

The combustion turbines in the New Brunswick system run less than two percent capacity factor. And Emera Energy feels it is more appropriate that we move to a proxy that is more likely to be replacing the energy at the time. In this particular case we actually worked up an example of using something such as a number 6 fuel oil as a proxy, which today would be burned in plants such as Coleson Cove.

And we have suggested actually a number of forms in which the proxy could be put together. If it were related to the incremental cost of generation inside of the system, in other words the actual cost of replacing that energy, would be one form of designing a proxy.

This is not dissimilar to what is almost a market based environment where the independent system operator or transmission provider garners that replacement energy at a market price.

Market prices tend to converge on a variable cost of generation with an adder which in the long run equates to cost of recovery of capital for the type of generation

that is being used to generate the power.

So Emera has put forward two specific examples in its evidence, one of marginal energy cost with a specific adder, and the second is that of a -- either a number 6 fuel oil, which is more likely to be on the margin in New Brunswick, and replacing the imbalance, or something like a gas-fired generation.

Q. - And they are put forward as options. So which of those options would you think would be the most appropriate?

MR. SIDEBOTTOM: Of those options the most appropriate would be to move towards a marginal based pricing that allows for a mirroring of the actual cost of replacement energy.

If you take a look at the examples given you could look at those as points on a curve. The ideal state is having the marginal cost of generation which actually relates to the cost of production. In lieu of that you could pick a number of points on the curve which one of them being something like a number 6 fuel oil.

MR. GORMAN: We don't have any further questions, Mr.

Chairman. Thank you.

CHAIRMAN: Thanks, Mr. Gorman. Does Board counsel have any questions in reference to this Panel?

MR. MACNUTT: No, Mr. Chairman.

CHAIRMAN: Okay.

BY MR. SOLLOWS:

Q. - I have just two questions. One of them I put to the Nova Scotia Power panel and we both thought it would be better put to you.

The question I have is how large is the wholesale market in New England? How many wholesale customers are there?

MR. SIDEBOTTOM: The wholesale market in New England is in excess of 20,000 megawatts. I'm not sure of the exact number of customers.

Q. - More than ten?

MR. SIDEBOTTOM: More --

Q. - Hundreds?

MR. SIDEBOTTOM: It would probably be in the hundreds, yes.

Q. - Okay. Thanks. And as I was listening to the testimony earlier I found myself wondering about the concern you have with access through and out of -- presumably through and out of New Brunswick to the New England market and the requirement for a deadline date for reciprocity, and you want enough time for the process to evolve in Nova Scotia.

And I guess my question is would it be an appropriate compromise to have the existing through and out tariff be an alternative for Emera and Nova Scotia Power until they have that equivalent open access tariff?

MR. CONNORS: It's an interesting suggestion, Mr.

Commissioner. We want to take a moment to talk because it is one we had not thought about before.

Our initial reaction to it would be to say no, you ought to be trying to structure the opening of your market in a way to involve all participants.

We have a uniquely Canadian situation here in that not all provinces move together at the same time. And all we are asking is that you have some reasonable transitional rules.

It may be that you will want to put something in that says we will allow Nova Scotia a reasonable period of time, and then perhaps set yourselves a date when they will be reporting back. And if at that point you felt things weren't moving along then you might take some other course of action.

That would be our suggestion, rather than in effect try to preserve two tariffs at the same point in time. That may become -- NB Power could address it more but there may be issues in trying to manage that.

Thank you.

MR. SOLLOWS: That's it.

CHAIRMAN: Mr. Connors, when you were describing the Emera group of companies I forget which one you indicated had a

marketing license in the States

MR. CONNORS: Yes. That's a company called Emera Energy Services which is a U.S. company.

CHAIRMAN: All right. And that would at the present time be only able to sell from Bangor Hydro?

MR. CONNORS: No. It actually -- I don't think it's doing any business with Bangor Hydro, subject to check. And it's also one of the interesting aspects about the -- Nova Scotia -- Emera was the first Canadian company to acquire an American utility, and under their particular legislation there are also some restrictions on how Nova Scotia Power's power can be sold into the United States. And so it has to be sold through an independent third party as opposed to through an affiliate.

CHAIRMAN: So that's why that company is not doing any business?

MR. CONNORS: It's not doing any business. Well also within the restructuring rules under Maine there are limitations as to how much work an affiliate of a restructured Maine utility can do within its service territory.

So it's primarily looking, as I understand it, subject to check, but my understanding is it's working on markets that go outside of the territory of Bangor Hydro.

CHAIRMAN: Thank you, Mr. Connors. Mr. Morrison?

MR. MORRISON: Mr. Chairman, I have a number of documents.

I assume you want me to have them pre-marked as we did with Mr. Smellie.

CHAIRMAN: Probably it's better that way. You I presume have shared these with Mr. Zed?

MR. MORRISON: Yes. Mr. Zed and I have been communicating about them for the last week and a half. So the witnesses should be well familiar with the documents, Mr. Chairman.

CHAIRMAN: Okay. I have in front of me a single page document which looks like the Emera -- what would you call it -- corporate structure -- not corporate structure but its various companies, et cetera. And that will be A-13.

MR. MACNUTT: Mr. Chairman, NB Power is just in the process of distributing these documents. I wonder if we could sort of go a pace so that we could mark them as you identify them. In other words you were going to get ahead of us and we wouldn't know what you were identifying.

CHAIRMAN: I have only done one, Mr. MacNutt.

MR. MACNUTT: I was anticipating that you were going to race to the conclusion and mark them all at once.

CHAIRMAN: All right. I will depart from my normal characteristic spurt at the end and keeping it slow, Mr. MacNutt --

MR. MACNUTT: Thank you, Mr. Chairman.



CHAIRMAN: The next document that I have is obviously an excerpt from *Seizing the Opportunity*, Volume II. There are two pages attached to that title page, and that will be A-14.

MR. CONNORS: I'm sorry, Mr. Chairman?

CHAIRMAN: *Seizing the Opportunity*, Volume II. The next document will be A-15 and that appears to me to be an excerpt from a final rule of FERC issued on the 20th of December, 1999, and it's a four page exhibit. So that's A-15.

The next number is A-15, and that -- sorry -- A-16 -- and that's an excerpt from the final rule in FERC Order 888.

Am I going too fast, Mr. MacNutt?

MR. MACNUTT: Well would you just repeat what A-15 is, because --

CHAIRMAN: A-15 is an excerpt from a FERC Order dealing with regional transmission organizations issued on the 20th of December 1999. I'm told by Commissioner Sollows it's Order 2000. But it's a four page excerpt, not to be confused with Exhibit A-16 which purports to be an excerpt from --

MR. MACNUTT: For the benefit of the participants, Mr. Chairman, NB Power is just distributing what you have

marked as A-15 at this time. That's where the confusion came in. We did not have it before us so that we could mark it.

CHAIRMAN: Mr. Morrison, you have not organized this well, sir. You have Mr. MacNutt totally confused.

MR. MORRISON: I thought I had organized it well but apparently I have not. It might be appropriate if we can maybe take ten minutes, or did you want to break for lunch now? My cross examination is going to be an hour or an hour and ten minutes I anticipate.

CHAIRMAN: That long?

MR. MORRISON: I anticipate. I can underestimate if you prefer, Mr. Chairman.

CHAIRMAN: I think -- why don't we -- how many more exhibits do you have?

MR. MORRISON: I believe there are three more.

CHAIRMAN: Let's at least get those done.

MR. MORRISON: Okay.

CHAIRMAN: And Mr. MacNutt now allows me to mark A-15. And then 888 is A-16.

CHAIRMAN: Now I will just wait until everybody has this but the next we will be marking is from the Regie in Quebec. And it is a translation from their decision dated -- the decision was delivered on the 9th of April 2001.

MR. MORRISON: Perhaps you might identify that further, Mr. Chairman, as being section 10. Because there is a subsequent one that deals with Section 7.

CHAIRMAN: Well I could, but there is nothing on the face of it that says I should. Okay. So this is Section 10 then. Everybody got a copy of that? I will wait.

MR. MACNUTT: Mr. Chairman, just to advise the participants, the most recent handout from NB Power apparently is with respect to Section 7, not 10. You just marked 10 which is now being handed out.

CHAIRMAN: I didn't mark it, Mr. MacNutt. I said I was going to.

MR. MACNUTT: I'm sorry, Mr. Chairman.

CHAIRMAN: What a task master.

MR. CONNORS: Dare I ask for a copy?

CHAIRMAN: No, you don't dare. You don't dare. Please, Mr. Connors, hold your peace.

MR. CONNORS: We didn't get Section 7.

CHAIRMAN: No, and I haven't got it yet either. So that is just Mr. MacNutt. He has been uniquely fingered for that one. I want to wait until -- does everyone now have the section 10 portion of the English translation, the Regie's Decision of April 9, 2001?

Well since nobody said no, we haven't, why I presume

you do and that is now marked A-17. That is section 10. This is referred to section 7 of the Regie Decision, is that correct?

MR. MACNUTT: Yes.

CHAIRMAN: We don't have that yet. You are ahead of us.

Mr. Morrison, I'm disappointed in you.

MR. MORRISON: My apologies, Mr. Chairman.

CHAIRMAN: All right. I now have a further excerpt from the Regie's Decision of April 9, 2001 dealing with section 7, transmission losses. Everybody have a copy of that?

Okay. That is A-18.

Now I believe the final document that the secretary has is -- well written in the top right-hand corner is Order 888 A, Part II. Okay. Everybody got a copy of that?

MR. MACNUTT: None of us have copies, Mr. Chairman.

CHAIRMAN: All right. Then Order 888 A, Part II, that three page excerpt will be given an exhibit number A-19.

Mr. Morrison, those are all the exhibits?

MR. MORRISON: That's it, Mr. Chairman, thank you.

CHAIRMAN: So why don't we break for lunch and come back at 1:30 then.

(Recess - 12:00 p.m. - 1:30 p.m.)

CHAIRMAN: Good afternoon, ladies and gentlemen. Any

preliminary matters? If not, Mr. Morrison, go ahead, sir.

MR. MORRISON: Thank you, Mr. Chairman.

CHAIRMAN: Actually Mr. MacNutt pointed out to me, and properly so, that I had the examination of this panel out of sequence, that he should have been after you, Mr. Morrison, and whatnot.

So I said well, Mr. MacNutt, if you have any questions after Mr. Morrison's examination we will be glad to give you the opportunity.

MR. MORRISON: Fine, Mr. Chairman. And I promise I won't put any more documents in today.

CROSS EXAMINATION BY MR. MORRISON:

Q. - Good afternoon, Mr. Connors, Mr. Sidebottom.

MR. SIDEBOTTOM: Good afternoon.

MR. CONNORS: Good afternoon.

Q. - There are essentially three issues that you have raised in your evidence. And I'm going to deal with two of them really this afternoon.

The first is one that came up in your evidence this morning. And it deals with the question of energy imbalance.

And I believe in response to a question from Saint John Energy this morning, I believe it was you, Mr. Sidebottom, that said that the proxy that is being

proposed by NB Power for pricing energy imbalance -- and my notes indicate that you say that the proxy is not reflective of the actual costs of the supply for energy imbalance.

Is that a fair paraphrase of your position on that?

MR. SIDEBOTTOM: Reasonably so, yes.

Q. - Okay. Now you would agree with me that energy imbalance, there should be a pricing signal that gives a clear incentive for market participants to meet their load schedule?

MR. SIDEBOTTOM: Yes, we do.

Q. - And conversely then you would also agree with me that the pricing signal should be a disincentive for people or participants to lean on the system.

And you know what I mean by leaning on the system, right?

MR. SIDEBOTTOM: Yes. I would say that the disincentive needs to be of the right size so that it puts appropriate signals to move the generator to the load schedule and at the same time balancing the fact that you don't want to overpenalize the generator to the extent that it is going to cause them not to consider using potential paths, or in a general case, you know, probably disincent using the open access system.

If you have too high a penalty you can actually cause people who are looking to invest or use a transmission system to put an extreme risk premium in place because the disincentive would be too great.

Q. - Okay. That is a long answer to my question. And I will restate my question again just so that it is clear on the record.

You would agree that the pricing signal has to provide a disincentive for participants to lean on the system.

Would you agree with that statement?

MR. SIDEBOTTOM: Yes.

Q. - Thank you. I would like to turn now to the question of the 1998 reservations. And perhaps, Mr. Connors, you are probably the person that took the lion's share of the questions on that this morning.

And I will direct my questions to you at least initially. And I just want to make sure that we are talking about the same thing.

It is my understanding from your evidence and what you indicated this morning that Emera takes issue with the reservations under the out and through tariff in 1998 and particularly with respect to those dealing with the MEPCO tie, is that fair?

MR. CONNORS: I think that that is fair, yes.

Q. - Okay. And I just want to review the facts to make sure that we are all --

MR. CONNORS: It is the MEPCO tie that seems to be the one that has the greatest capacity reservation --

Q. - Okay. So I will just --

MR. CONNORS: -- and also the one that accesses probably the most important market area.

Q. - Fair enough. I will just review the facts to make sure that we are all talking apples and apples.

When the out and through tariff was introduced in 1998 there existed I think it was 470 megawatts of reservation on the MEPCO tie. And of that -- and those were in NB Power Generation. And those reservations were honored under the 1998 tariff.

Are you with me so far, Mr. Connors?

MR. CONNORS: I'm not in a position to dispute anything that the record has established --

Q. - Okay.

MR. CONNORS: -- with regard to who holds what. And I know there have been information responses back from your company on that. And we accept what all of those say. So it may not be necessary to go through it piece by piece.

Q. - Well, just to set the stage at least. And those reservations were -- they had a one-time right of renewal.



And NB Power Generation exercised that right of renewal.

And that is what got us to the situation where we are today with respect to the reservations on the MEPCO tie.

Would you agree with me so far?

MR. CONNORS: All I know is what it appears to be today, which is that there is a significant -- there seems to be a significant amount of that capacity which is held by New Brunswick Power and does not seem to be connected to third party contracts.

Q. - Okay. But --

MR. CONNORS: And obviously there was a history at some point perhaps some of them were, and that they were not continued. I don't know what the whole history of each one is other than that's where it is today.

Q. - But as I understand your evidence, Mr. Connors, that is the basis of your objection, that there were 470 megawatts honored, if you will, in 1998.

When those contracts came up for turnover or rollover, they were renewed. And that gives us the situation that we are in today with respect to the MEPCO tie-in.

I understand that that is what you take issue with, the process of honoring the original reservations and the one-time renewals of those reservations?

MR. CONNORS: I think it is more accurate to say that today

we look at your company putting forward for the first time an open access transmission tariff in New Brunswick.

And so our position with regard to that is that the same rules should apply here generally as seem to have applied elsewhere, and that that in our interpretation would mean that third party contracts would be preserved but that NB Power, if you would, contracting with itself, that that isn't a third party contract. And it is exactly those kinds of things which ought to go up into the competitive option.

Q. - Okay. Well --

MR. CONNORS: To the extent that your company relies upon the 1998 tariff, I think I have already said this morning that there are a variety of reasons we don't consider that to be --

Q. - Okay. I will get into that --

MR. CONNORS: Okay.

Q. - -- Mr. Connors.

I would ask you to turn to exhibit A-16. And you are vice-president of Regulatory Affairs, Mr. Connors?

MR. CONNORS: For Emera Inc., yes.

Q. - Okay. And you talked this morning about FERC Order 888 and beyond, I think were your terms. You are familiar with the FERC Orders and --

MR. CONNORS: I have some familiarity with it. I have read it. And of course we are doing some business in that area.

But I wouldn't want to -- one of the difficulties I think in this whole scenario in Canada is none of us are FERC lawyers. But with those qualifications in mind I will try to answer your questions.

Q. - Okay. Fair enough. Would you turn to page 84 of exhibit A-16?

MR. CONNORS: Yes.

Q. - And I believe the copy that I gave you has a highlighted portion. And I wonder if you could read that for me please?

MR. CONNORS: It says, we do not believe it is appropriate to order generic abrogation of existing requirements and transmission contracts.

Q. - Okay. And I would ask you to turn in the same exhibit to page 88. And I believe I have highlighted the last paragraph on that page. I wonder if you could read that for me please?

MR. CONNORS: Yes. Again in our view FERC is talking about third party contracts but says --

Q. - Okay. Well, we can get into argument later, Mr. Connors, but --

MR. CONNORS: Okay. Quotes, "A further issue concerning firm contract customers is their right to transmission capacity and the rate for such capacity when their contracts expire by their own terms or become subject to renewal or rollover. We have concluded that all firm transmission customers' requirements and transmission only upon the expiration of their contracts, or at the time their contracts become subject to renewal or rollover, should have the right to continue to take transmission service from their existing transmission provider. The limitations are that the underlying contract must have been for a term of one year or more, and the existing customer must agree to match the rate offered by another potential customer up to the transmission provider's maximum filed transmission rate at that time, and to accept a contract term at least as long as that offered by the potential customer."

Q. - Thank you. Now do you dispute or do you have any evidence to suggest that the reservations that were renewed were for more than a term of one year, the NB Power Generation renewals that arose from the 1998 tariff?

MR. CONNORS: Again, you know, the record with regard to those, I think, it's on the record. And we are not disputing what the record says --

Q. - Fair enough.

MR. CONNORS: -- about those.

Q. - Okay. I will put another question to you, Mr. Connors.

Do you dispute or do you have any evidence to suggest that any other potential customers offered a rate that was not matched by NB Power Generation?

MR. CONNORS: Again, with no disrespect, you are mixing apples and oranges. You are talking on the one hand about a process under a tariff which was not an open access transmission tariff.

You had no functional unbundling of NB Power, you had no code of conduct, you had a discriminatory rate structure, and you had no inservice.

It did not meet any of the fundamental crit' -- or it did not meet all of the fundamental criteria of an open access transmission tariff. So we begin I think in this discussion at different points.

Q. - That may very well be. But that wasn't my question.

My question was do you dispute or do you have any evidence to suggest that there were any bids from other customers or potential customers that were not matched by NB Power Generation in the renewal process?

MR. CONNORS: I have no knowledge as to the bids.

Q. - Thank you. And if you could turn please, Mr. Connors, to

page 89 of FERC -- A-16. Again I have a highlighted portion on that page. If you could read that please?

MR. CONNORS: Moreover, this limited right of first refusal is not a one time right of first refusal for contracts existing as of the date of the final rule but as an ongoing right that may be exercised at the end of all firm contract, including all future unbundled transmission contract terms.

And your question?

Q. - My question is are you aware that the right of renewal that was offered to NB Power Generation was just a one time right of renewal?

MR. CONNORS: Well what you are talking about is NB Power offering something to itself. It's not in the same category as to what FERC is talking about.

FERC at this time is talking about the third party contracts. At -- back when this Order was granted essentially most of the utilities or a great number of them were vertically integrated, and the situation, at least I believe, is talking to that and the contracts it refers to being legitimate third party contracts, as opposed to a company holding transmission and purporting to contract with itself.

Q. - I will ask my question again, Mr. Connors. Are you aware

that the right of renewal that was offered under the 1998 tariff was a one time right of renewal, or do you have any reason to disagree with that?

MR. CONNORS: The tariff document speaks for itself --

Q. - Okay.

MR. CONNORS: -- when it talks of that. I don't disagree with that. Where I disagree with you is in its application to New Brunswick Power itself.

Q. - And I --

MR. CONNORS: The document speaks for itself.

Q. - And I understand that we will have some disagreements and I would suggest that that would be best left for argument, Mr. Connors.

MR. CONNORS: Well I'm a little worried. I don't want my testimony to be taken by the Board that simply because I have read these sections from the FERC that I have accepted that this is something that applies in your situation. I won't argue the point other than to say most strenuously that what FERC is talking about in all of these Orders are independent third party contracts.

CHAIRMAN: Mr. Connors --

Q. - That is fair enough.

CHAIRMAN: Mr. Connors, rest assured that we understand your position.

MR. CONNORS: Thank you, sir.

CHAIRMAN: Let's get on and just answer the question that Mr. Morrison puts now and you can argue later.

Q. - I would ask you, Mr. Connors, to turn to exhibit A-15.

MR. CONNORS: I have it.

Q. - And if you could read the highlighted portion on page 602.

MR. CONNORS: Okay. I have got it. At this time we continue to believe that it is not appropriate to order generic abrogation of existing transmission contracts. We recognize that existing contracts represent negotiated rights and obligations achieved through mutual negotiation.

Q. - And the Order that I'm referring to that came out a couple of years after Order 888?

MR. CONNORS: According to the document itself it's December 1999. Yes, it's the 2000 -- so-called 2000 Order.

Q. - Despite our disagreement as to whether we are talking apples and apples or apples and oranges, Mr. Connors, you would agree with me that at least with respect to this issue FERC has been consistent in its policy?

MR. CONNORS: Oh yes, I have -- I think we have common ground if we are talking about third party contracts, that FERC has been quite clear that those aren't to be



abrogated. Now there has been some entrenching it appears around the corners of that but as an essential principle, no, we are on the same page.

Q. - Okay. That's fair enough. I would ask you to turn to exhibit A-14.

MR. CONNORS: And this is the extract from the energy policy?

Q. - From the energy policy that we referred to this morning. And again my diligent highlighters have highlighted a segment on page 15 of that document. It is at the top of the page.

MR. CONNORS: Yes. Okay. Got it.

Q. - I wonder if you could read that highlighted portion please, Mr. Connors?

MR. CONNORS: To date the size and profitability of NSPI's export market has been severely limited by a 300 megawatt interconnection with New Brunswick, a relatively high transmission tariff in New Brunswick, limited surplus generating capacity, particularly during the winter months, and the fact that Nova Scotia does not currently satisfy FERC's reciprocity requirements, FERC Orders 888 and 889.

Q. - Now I understand that this isn't an Emera document. It's a policy document from the Province of New Brunswick. Is

there anything in that highlighted portion that we just --  
that I just had you read with which you disagree or with  
which Emera disagrees?

MR. CONNORS: No.

Q. - Oh, I'm sorry, I said the Province of New Brunswick. I  
meant Nova Scotia.

MR. CONNORS: No, sorry, I heard your question as the  
Province of Nova Scotia.

Q. - Thank you. That paragraph seems to talk about, and you  
can agree with me or not, limitations on the ability of  
NSPI, Nova Scotia Power to expand. Is that a fair  
comment?

MR. CONNORS: It is talking about NSPI's export market.

Q. - And the constraints on that --

MR. CONNORS: Sure. I mean, the ties as it is.

Q. - There is no mention in that segment that we have just had  
you read of the MEPCO tie or any constraints in the MEPCO  
tie?

MR. CONNORS: No.

Q. - Now I know that in answering some questions from Mr.  
Barnett this morning, there was -- I think he put the  
question to you whether Emera or its predecessor Nova  
Scotia Power received notification of the open season in  
the 1998 tariff. And if I understand your evidence

correctly, Mr. Connors, I guess you didn't know? Is that fair?

MR. CONNORS: Just -- could you just repeat the question for me again, Mr. Morrison?

Q. - I believe Mr. Barnett asked you this morning whether Emera or its predecessor, Nova Scotia Power, when the out and through tariff was introduced 1998 whether Nova Scotia Power at that time had been given notice of the open season. And I believe your response was that you didn't know, but I'm not sure if that's correct.

MR. CONNORS: In fact I think I was trying to say that we have made some effort within the company to see whether in fact there was a notice or we had some record of a notice. If Mr. Marshall or someone says this is how we gave notice, we wouldn't disagree with that.

Q. - So you wouldn't --

MR. CONNORS: It's just we are unable to find anyone with a --

Q. - No.

MR. CONNORS: -- recollection or any document that speaks to it.

Q. - I understand. So if I told you that the matter was raised at an operating committee meeting --

MR. CONNORS: Yes, we would --

Q. - -- between -- you would have no reason to dispute that?

MR. CONNORS: No. No, if that is what is said we accept that.

Q. - And as far as you know, Mr. Connors, Nova Scotia Power or Emera -- or I guess it would have been Nova Scotia Power at that time didn't bid in that open season?

MR. CONNORS: Again the answer to that question is no.

Q. - No, okay. And it's also the fact, isn't it, Mr. Connors, as these contracts became up for the renewal as we talked about earlier, the reservations came up for renewal, the one time right of renewal, that that transmission capacity on renewal became available for bids from third parties? Would you be familiar with that?

MR. CONNORS: In general terms I am. And I agree with your proposition.

Q. - And as far as you know Emera nor any of its predecessors or affiliates bid on that transmission capability either?

MR. CONNORS: I'm -- I agree. I think we previously had made mention to two incidents last year --

Q. - Yes.

MR. CONNORS: -- where Emera Energy --

Q. - With the exception of those two?

MR. CONNORS: -- attempted to obtain capacity. But other than that, no, there are none.

Q. - Now I understand that -- and again in questions from Mr Barnett this morning that your -- when I say your, Emera Energy's parent company, which is Emera Inc. -- with whom you are vice president, I understand, Mr. Connors, is that right?

MR. CONNORS: For Regulatory Affairs.

Q. - I'm just trying to keep all the dance cards straight.

MR. CONNORS: Well --

Q. - That it acquired Bangor Hydro in 2001? Sometime in 2001?

MR. CONNORS: Yes.

Q. - And am I also correct in saying that there is a subsidiary of Emera Energy Inc. which is Emera Energy Services Inc., is that -- am I correct on that?

MR. CONNORS: There is another affiliated company called Emera Energy Services Inc., which I believe is -- it's an American company and I referred to it this morning. Now as to whether its a direct subsidiary of Emera Energy or not, I'm not able to say at this point.

Q. - But it is a related company?

MR. CONNORS: It is a related company, clearly.

Q. - And am I correct in saying that Emera Energy Services Inc. obtained a FERC marketing licence. Again that was also in 2001? I think we --

MR. CONNORS: I -- yes, it certainly has an authorization

from FERC to sell power at market base rates, and I believe that was obtained in 2001.

Q. - Mr. Marshall suggests that it may have been 2002?

MR. CONNORS: There is documents in the record that we -- that could be checked very quickly if it's important.

Q. - It's not important actually. Whether it is 2001 or 2002 is not material. Now this marketing licence -- with this marketing licence Emera is now able to sell energy into -- directly to U.S. customers, is that correct?

MR. CONNORS: We are able to engage in energy sales in the American northeast, that's correct.

Q. - And it would be true -- this may be obvious but I'm going to state it anyway --

MR. CONNORS: But not energy of Nova Scotia Power.

Q. - No, I appreciate that. This may be obvious but I'm going to state the question -- put the question anyway. At the time of the open season in 1998 Emera or its predecessor, Nova Scotia Power Inc., didn't have a FERC marketing licence for U.S. access?

MR. CONNORS: No.

Q. - No, okay. I'm going to ask you to turn to exhibit A-17. That's the English translation of the Hydro Quebec decision coming out of the Regie.

MR. CONNORS: Yes.

Q. - And that's the document that deals with section 10 of that decision, which is the procedures for the initial allocation of transmission capacity and for the renewing of contracts.

And I would ask you to turn to the second page of that document. In the middle paragraph I have a highlighted portion that deals with OPG's intervention in that case. Could you read the highlighted portion for me, please?

MR. CONNORS: Yes. Moreover the Intervenor submits that applying prior right as foreseen in section 2.2 for renewing the reservation of transmission services for Hydro Quebec's export contracts in effect at the time when bylaw 659 came into force will result in practice to give a permanent control over the firm transmission service to the Hydro Quebec production group and to give it an unfair advantage over its competitors in transacting on the northeast markets of the United States. OPG submits that this was the Energy Services Group intended objective in 1997 and that the procedure that was followed then constituted a violation of the underlying principles of open and fair access to the transmission service.

Q. - Would it be fair, Mr. Connors, to say that the position that was being put forward by OPG in the Regie case is similar to the position which you have adopted in

connection with the reservations in this case?

MR. CONNORS: I'm not sure that it is. I mean we only had the extract from the case. It may very well be very similar. I wasn't sure for example what the terms of the 1997 tariff were. Was it truly an open access transmission tariff? That would be relevant.

I wasn't sure whether or not what the export contracts were. It sounded -- my understanding of the Quebec situation is that a huge volume of those inter-ties were built by being underpinned by contracts that were behind the development of James Bay and those kinds of projects. So that in Hydro Quebec's case you could look at the capacity reservations and see large volumes of sort of third party contracts, if not directly, indirectly behind them.

And I think, sir, if that's true, that's different from what we are talking about here, because we are certainly not objecting to the third party contracts or those which are back --

Q. - I think we are clear on your position.

MR. CONNORS: But you are asking me about Hydro Quebec and our understanding at this point is that there may be some factual differences and --

Q. - That's fair enough.



MR. CONNORS: -- the decision also got a little complicated further on because it was -- there is a portion in it where the council -- it seems to be that this argument was raised, then abandoned and then raised again, and that added to muddy the waters.

Q. - If you turn to page 5, and again I have a highlighted portion which is the Regie's opinion or decision with respect to this issue. I highlighted a portion. I wonder if you could read that, please?

MR. CONNORS: The evidence and the arguments submitted by NEG and OPG have not convinced the Regie that prior rights of renewal contained in and as conferred in section 2.2 of bylaw 659 have to be modified, particularly by putting in place an open bidding procedure for the apportionment of the systems transmission capacity.

Q. - And would you agree with me that insofar as it goes, Mr. Connors, that the Regie rejected OBG's argument on this issue?

MR. CONNORS: Well clearly that's what they are saying, yes.

Q. - I'm curious as to what you mean when we talk about third party contracts, and I will just put the position of NB Power aside for a moment.

Do these have to be long term firm contracts or do they -- short term firm contracts, the ability to

participate in a particular market? I'm just curious as to what you mean by third party contract.

MR. CONNORS: Well if you take the case of a MEPCO tie, for example, some of those contracts may relate to, you know, a party has come and committed to a certain amount of capacity for a certain period of time, third party. Your company as well may have contracts to supply power to a certain third party behind some of the reservations that NB Power holds. That's fine.

It's where the transmission company, or in this case the integrated -- the utility -- is holding capacity in its own name and in effect has a range of options as to what it can do with it.

Q. - So you are not -- when you say a third party contract you are not tied to any specific type or duration of contract?

MR. CONNORS: I'm advancing that as a general proposition, that's correct.

Q. - Fair enough. Now is it physically possible for Emera, Nova Scotia Power for that matter, to access other markets, including the U.S. market, using other routes other than NB Power? For example, can you wheel through Quebec to New England, other than -- other than using the MEPCO interface?

MR. CONNORS: Right. My friend -- my colleague tells me we

could go through Quebec but we would experience much higher losses taking that route. So practically the MEPCO route is the preferred route.

Q. - But physically you could access the New England market through Quebec, the New York market, Ontario market presumably through Quebec, is that correct?

MR. CONNORS: In theory you could, subject to the comment with regard to losses.

Q. - And just getting back to this Regie decision --

MR. CONNORS: Just give me a moment, Mr. Morrison.

CHAIRMAN: While the witness is conferring, Mr. Morrison, just for the sake of the record, OPG is Ontario Power Generation I presume?

MR. MORRISON: That's correct. Sorry.

MR. CONNORS: All right, Mr. Morrison. Thank you very much.

Q. - Nothing further? Okay. That's fine. I have a few more questions dealing with one more issue. I wonder if you could turn to exhibit A-19. I'm going to ask you a question -- and I have raised this with Mr. Zed -- it is the reciprocity issue. I know that the reciprocity issue was raised in Nova Scotia Power's evidence, but I have discussed this line of questioning with Mr. Zed and I think he understands where I am coming with it.

And if you could turn to page 13 of Exhibit A-19, and

if you could read the portion which I have highlighted.

MR. CONNORS: This is where they say, we are not requiring non-public utilities to provide transmission access. Instead, we are conditioning the use of public utility open access tariffs by all customers including non-public utilities, on an agreement to offer comparable (not unduly discriminatory) services in return. It would not be in the public interest to allow a non-public utility to take non-discriminatory transmission service from a public utility at the same time it refuses to provide comparable service to the public utility. This would restrict the operation of robust competitive markets and would harm the very ratepayers that Congress has charged us to protect.

Q. - I realize it references there to Congress, the American situation, but would you agree with me, Mr. Connors, that this is FERC's position with respect to reciprocity in terms of allowing access from -- by one jurisdiction into the transmission system of another jurisdiction, the conditions -- the reciprocal conditions which must be met?

MR. CONNORS: It's part of FERC's statement on that matter, but I don't think it's the entire statement on that matter.

Q. - That's fair.

MR. CONNORS: I mean FERC has a number of waiver conditions

and there have been a whole bunch of cases where they have dealt with and applied those.

Q. - Right. Now do you agree that allowing Emera or any of its affiliates, notably Nova Scotia Power, to take transmission service from New Brunswick when it doesn't or Nova Scotia Power doesn't allow comparable access, that would amount -- let me back up for a moment.

Emera Energy has contracts to sell power in Prince Edward Island, is that correct?

MR. CONNORS: Yes, I understand that to be the case.

Q. - And if Nova Scotia Power does not provide reciprocity to NB Power there is the potential that Nova Scotia Power and its affiliates, namely Emera, might not be allowed access to the New Brunswick transmission system? That is a possibility, would you agree with that?

MR. CONNORS: Well indeed I think we have raised and asked that there be some transition period in order to allow our systems to come into sync in this regard.

Q. - And if that happened your contracts, and when I say your contracts I mean Emera Energy Inc., would potentially be put in jeopardy, wouldn't they? The PEI contract for example?

MR. CONNORS: Well I would assume that if New Brunswick Power took steps to prevent the flow of power from Nova

Scotia to Prince Edward Island, that amongst one of the issues that would ensue would be a contract problem.

Q. - That aside --

MR. CONNORS: But I don't expect our companies are going to go down that route. That's why we are trying to resolve these issues in this fashion.

Q. - The contract issue aside, and assuming that the contract has run its course, the existing contract, Emera's ability to sell into Prince Edward Island after this contractual arrangement terminated, in the absence of reciprocity could be put in jeopardy, is that fair?

MR. CONNORS: The short answer is under the terms of your proposed tariff I believe that to be the case, and that's exactly why Nova Scotia Power has raised and Emera Energy agrees that there needs to be some kind of transition period for a reasonable period of time that acknowledges the different rates at which the two jurisdictions are moving towards more open tariffs.

Q. - But the potential is there for Emera Energy Inc., and I'm talking about Emera Energy Inc. only in this context, there is a potential there for it to suffer some losses or potential losses, if they were not able to access the New Brunswick transmission system for wheeling contracts into Prince Edward Island, for example?

MR. CONNORS: I don't know enough about the terms of the contracts to be able to say whether or not that kind of situation would be addressed for example as a force majeure, whether there is anything that deals with that, Mr. Morrison. So I can't -- I haven't seen the contracts, I haven't read them.

Q. - My question isn't contract specific actually, Mr. Connors. Assuming that you wanted to gain access to the Prince Edward Island market after your existing contracts expired, terminated, and because of the reciprocity issue if you will, you were denied access to the New Brunswick Power transmission system.

In that situation the lack of reciprocity could have a negative impact on Emera Energy Inc., is that correct?

MR. CONNORS: Yes. In the context you are talking about, quite clearly. I mean that's why we are all concerned about getting these things done in Nova Scotia in a time frame that works for both systems in both provinces.

Q. - And would it not be in the interest of Emera Energy Inc. to be before this Board supporting NB Power's position on reciprocity, despite what the interest of Nova Scotia Power might be?

MR. CONNORS: We are. I mean I said at the outset of my remarks today we support the tariff. We don't even

dispute the reciprocity position.

All we are saying -- all Nova Scotia Power is saying, and we agree with that, is recognize the political and market realities of Nova Scotia. Just as it took you six or more years to get here in New Brunswick, recognize it's taking a little bit of time in Nova Scotia and let's work together on that.

Q. - Well I put this question to Mr. Whalen and I will put the question to you, and I'm not putting it to be argumentative, but do you believe it's fair and reasonable for Nova Scotia to have access to the New Brunswick transmission system at the wholesale and industrial retail level when New Brunswick doesn't have and won't have, at least for a period of time, access to the Nova Scotia market?

MR. CONNORS: And by Nova Scotia market you mean the Nova Scotia wholesale market?

Q. - I'm talking about wholesale market.

MR. CONNORS: Wholesale market. In the context of how our two provinces have moved along and that we are relatively close in point of time, and you are here on an application, we are saying in our province it will probably be another year before we are in an application, we are not that far out of step that we ought not to be



able to work together on this through a transitional period.

If we were thumbing our nose at the process and doing nothing, then it would be unfair. But in the context of what is happening on the part of government, the utility, a whole range of other stakeholders in Nova Scotia, it is -- it would -- the fair thing to do would be to have the two provinces work together in the manner in which we are suggesting.

If we were doing nothing in Nova Scotia, you would be quite right, it would be unfair, and that's the whole -- one of the major underpinnings of these FERC tariffs. But that's not the reality of what is occurring.

Q. - Okay. Thank you for your comments on that issue. I want to turn just briefly to the question of losses. And it's your position I understand that losses should be transmitted -- should be calculated at least on the point-to-point service on a path specific basis?

MR. SIDEBOTTOM: That's correct.

Q. - That's correct. And I'm not going to get you to quote from the Regie decision that I put in front of you, Exhibit A-18, but I'm assuming, Mr. Sidebottom, that you are aware of it?

MR. SIDEBOTTOM: Of all the excerpts, yes.

Q. - Yes. And you agree that Hydro Quebec rejected the notion of path specific calculation of losses and went to a system average, or approved a system average basis for calculation of losses?

MR. SIDEBOTTOM: What they recognized was that their network service losses and their point-to-point losses were so similar, as a matter of fact less than a half a percent difference, that in their view they saw that they could be treated one and the same, which is different from the evidence presented in IR-27 from a New Brunswick Power question by EEI, which shows that the point-to-point losses across the New Brunswick system vary from about half a percent all the way to 8.4 percent depending on what path you are on.

Q. - Am I correct in recalling your evidence from this morning that one of the concerns that you have about the calculation of losses that's proposed in this tariff is that you were concerned about predictability or certainty?

Is that one of the issues that I understood you to --

MR. SIDEBOTTOM: For investment and for the future of the system a level of -- a level of appropriate costing and predictability around those enhances investment decisions.

And I think to expand on that point, it is a fact that attributing the costs or the associated losses of use of

path with the user gives a clear price signal which can be predictable for anyone contemplating using the transmission system.

Q. - Would you not agree though that system average loss is arguably as predictable if not more predictable than a path specific calculation?

MR. SIDEBOTTOM: It's certainly predictable. Whether it attributes the costs appropriate with the use of the system is another matter.

MR. MORRISON: Thank you, gentlemen. No further questions.

CHAIRMAN: Thank you, Mr. Morrison. Mr. MacNutt, do you have any questions?

MR. MACNUTT: No, Mr. Chairman.

CHAIRMAN: Gentlemen, you are excused. We will take a 10-minute recess while we change panels. Thank you.

(Recess)

CHAIRMAN: I just want to go on the record as apologizing to Mr. Zed for not giving him his opportunity to ask redirect questions of that panel. But he said it is all right.

MR. ZED: For the record I did not have a redirect.

CHAIRMAN: Okay.

MR. ZED: And I understand the panel is excused?

CHAIRMAN: Yes, it is, yes. Thank you, Mr. Zed. Panel D?

MR. MORRISON: It would be appropriate at this time to have

Mr. Snowdon and Mr. Scott return to the --

CHAIRMAN: Yes. I think we better reswear them.

(MR. SNOWDON and MR. SCOTT resworn)

CHAIRMAN: Now Mr. Nettleton, I guess it is you who are going to do the cross?

MR. NETTLETON: Yes, Mr. Chairman, fellow Commissioners. I'm going to be doing the cross for both CME and J.D. Irving.

I'm happy to report that there are no further exhibits for you to mark on my account today. So we can proceed right to cross examination.

CHAIRMAN: Okay. Go ahead, sir. I'm sorry. Mr. Morrison?

MR. MORRISON: Mr. Chairman, maybe this would be an appropriate time. There are two matters. There is an undertaking that we would like to get on the record that is ready.

CHAIRMAN: Yes. Go ahead.

MR. MORRISON: And there is also a clarification from some earlier evidence of Mr. Snowdon which I think we should deal with first before Mr. Nettleton --

CHAIRMAN: Yes.

MR. MORRISON: -- starts his cross.

First, Mr. Snowdon, under questioning from Mr. Nettleton you were asked whether -- this is with respect

to the R. J. Rudden report.

And I believe Mr. Nettleton asked you whether there was any other advice that you received with respect to the standards of conduct. And your response was no.

Technically, Mr. Chairman, that response is correct. But it may not be as fulsome as it should be. And I would like Mr. Snowdon to perhaps comment on that.

MR. SNOWDON: Yes, Mr. Chairman. I would reference the -- to start my clarification I would reference an interrogatory PNB IR-45, which basically states that when NB Power submitted this tariff document with its standards of conduct we -- and I will read from the second page or at page 362, part 2, where it says that "NB Power reviewed our standards of conduct with the Director of Strategic Planning to determine what changes would be required to facilitate the implementation of the bilateral market. NB Power concluded that the only change would be in the definition of merchant function. Since this was not seen as a substantive change, NB Power elected to modify the standards of conduct and not develop a new one."

When we asked R. J. Rudden to review the standards of conduct it was as submitted in the tariff document. We did however have KEMA Consulting, a US consulting firm out of Virginia, to review our standards of conduct that

went in with our unbundling project.

And they reviewed that in July of 1999 to determine its relative compliance with FERC order 889. They provided us with a review document. And the recommendations that they made were reflected in that standard of conduct that went in place at that time.

So in that sense it was reviewed in principle by KEMA Consulting in 1999 in addition to the R. J. Rudden.

CHAIRMAN: Anything else, Mr. Morrison?

MR. MORRISON: Yes. There is one undertaking, Mr. Chairman, that arose out of a question from yourself on November 21st to Mr. Scott. And it was list the subject matter of the tariff that can be changed without the Board's approval.

And I believe that was with respect to aspects of the interconnection agreement and technical requirements and so on. Mr. Scott is in a position to respond to that.

There is a written response that I'm happy to distribute, if that would be of any assistance. Or Mr. Scott can deal with it on the record, whichever you prefer.

CHAIRMAN: I don't know. But with the written response, why don't we simply mark that as an exhibit and consider that to be --

\ MR. MORRISON: Okay.

CHAIRMAN: -- fulfilment of the undertaking and be done with it.

MR. MORRISON: That would be fine.

CHAIRMAN: Good. My records indicate that that will be A-20. It is coming, Mr. MacNutt.

All right. Mr. Nettleton, go ahead, sir.

CROSS EXAMINATION BY MR. NETTLETON:

MR. NETTLETON: Thank you, Mr. Chairman. Panel members, good afternoon. It is good to be back in New Brunswick.

Q. - Mr. Snowdon, maybe just as a follow-up question to the clarification of the review that has been performed by KEMA Consulting. That was done in what year, sir?

MR. SNOWDON: July -- July of 1999.

Q. - Okay. And you said that there were recommendations made by KEMA. And were those recommendations then -- did those recommendations cause changes to the standard of conduct?

MR. SNOWDON: Yes, they did.

Q. - And can you describe what changes were recommended?

MR. SNOWDON: They have been incorporated in the current standards of conduct.

Q. - I see. And so the document that R. J. Rudden reviewed then took those into account at some point?

MR. SNOWDON: Yes, it did.

Q. - Okay. And can you refresh my memory on the date of the R. J. Rudden report, sir?

MR. SNOWDON: I will have to check myself.

Q. - Maybe you could -- just temporally how long after was it that R. J. Rudden was asked to review the report?

MR. SNOWDON: The date on that report is June 15th 2002.

Q. - And what caused you to have another review done of the standard of conduct by another third party?

MR. SCOTT: The work that was done by KEMA Consulting, we hired KEMA to review our initial work when we were preparing the standards of conduct for the very first time.

And they reviewed a draft and made recommendations.

And we incorporated those recommendations before we issued our first standards of conduct.

Q. - Okay. But why then did you so soon after have another third party consultant, namely the R. J. Rudden group, review that same document?

MR. SNOWDON: The primary reason -- we had R. J. Rudden in to review not only the standards of conduct, but the tariff and the attachment, schedules and so on.

However there were changes made to the standards of conduct that really redefined the definition of a market function. Prior to this current application, the 2000



version, the only merchant function that was involved in the wholesale merchant function.

This particular application also contains application to those involved with retail at the industrial level function as well. So during that process they did an overall review of the full standards.

Q. - So you are saying that while the standard of conduct document itself didn't change, other changes were made or did happen that forced or caused the need for R. J. Rudden to perform its analysis?

MR. SNOWDON: The only change that was made from the 2000 version of the standards of conduct to the current version was in the expanding of the definition to include the retail industrial merchant functions definition in those standards of conduct. The remainders remained the same.

Q. - Okay. Thank you, Mr. Snowdon.

If I could have you turn up JDI 7, sir. That is the exhibit that was filed today that contained the -- that contains the expanded NOPR, parts 1, 2, 3.

MR. MORRISON: JDI 6.

MR. NETTLETON: Is it 6? I'm sorry.

MR. SNOWDON: That is the bound version? These are not marked up here.

Q. - Sorry. It is JDI 6. And it is the pages 1 through 65 of

the -- sorry, 64 of the NOPR document.

And just to perhaps lessen your efforts up there, Mr. Snowdon, the other document that I will be referring to is your response to Bayshore Power information or interrogatory request, supplementary 6 which I think is A-5. You might want to have that at your ready.

CHAIRMAN: I'm sorry, Mr. Nettleton. I'm having a bit of difficulty hearing you on occasion.

MR. NETTLETON: I'm sorry, sir. I will speak up.

MR. SNOWDON: Which IR was that again, please?

Q. - That is NB Power's response to Bayshore Power -- Bayside Power, sorry, information request 6, the supplementary request 6.

MR. SNOWDON: That's BP supplemental 6?

Q. - That's correct. Have you got that, sir?

MR. SNOWDON: Yes.

Q. - What I would like to do, Mr. Snowdon, is start at page 60?

MR. SNOWDON: Page 60.

Q. - Sorry, 62 of the NOPR document, where at paragraph 105 the FERC has made four findings that are enumerated both on pages 62 and 63 of that document.

MR. SNOWDON: Yes, I have it.

Q. - Now from those four conclusions is it fair to summarize

these as saying that the pro forma tariff, the concerns that the FERC has are, firstly, the pro forma tariff contains provisions that in practice cause unjust discrimination. That's the first point. Do you see that?

MR. SNOWDON: Which line?

Q. - This is after we find that, the operation of the Commission's pro forma tariff -- transmission tariff, rather, which is administered by vertically integrated as well as non-vertically integrated utilities, such as ISO's contain provisions that in practice permit undue discrimination in the provisions of transmission tariffs or transmission services?

MR. SNOWDON: Under bullet 1 you are referring to?

Q. - That's correct. So the concern is the pro forma tariff contains provisions that in practice causes unjust discrimination?

MR. SNOWDON: No, I don't disagree with that. This is a FERC document.

Q. - Thank you. And the second finding that the FERC has made there relates to transmission public utilities who also participate in the power market possessing substantial market power in retaining the -- and retain the ability to unduly discriminate. Do you see that finding? That's under number 2.

MR. SNOWDON: Yes.

Q. - Do you have any comments or queries or concerns about that finding?

MR. SNOWDON: Yes. My review of these bullets, and I did review this. And this was in your handout that you gave us in November.

The pro forma tariff 888 dealt with access to transmission systems and did not deal with market rules. And I think what they are referring to here is the market rules that are being interpreted or associated with the tariff are the ones that are substantially causing these - - this undue discrimination.

It's not perhaps the tariff itself. It's how utilities are using the tariff in association with their market rules. This is clearly a market rules issue, in my opinion.

Q. - Okay. Thank you. Mr. Snowdon, is it fair to say that the tariff that you are asking this Board to approve does not contain market rules per se?

MR. SNOWDON: No, that's correct. Although the application of ancillary services and how energy imbalance are applied, those types of things are within the scope of the tariff document.

Q. - And so absent market rules, would you have any reason to

find this conclusion or this finding to be of concern to the Province of New Brunswick?

MR. SNOWDON: I'm not sure what you mean by absent market rules. There certainly will be market rules associated with the opening of the market in April.

Q. - And what is the status of those rules today?

MR. SNOWDON: They are under development.

Q. - Thank you. Let's move on to number 3. This finding seems to relate to the standardized wholesale market design issue. And relating to the lack of standardization of the market resulting, or may result or can result in unjust and unreasonable pricing. Is that a fair assessment of that finding?

MR. SNOWDON: Yes, I believe that to be correct.

Q. - Do you have any comments that you would like to make on that point as it relates to the New Brunswick marketplace?

MR. SNOWDON: In regards to the market rules or in what regard?

Q. - In regards to your application, sir? Is it of a concern as it relates to your application?

MR. SNOWDON: I in principle do not disagree with what statements you have made. Other than to say that FERC in its introduction of this NOPR actually recognizes that Order 888 has fundamentally altered the landscape of the

industry and has been a -- deemed to be a progressive first step in the unbundling of markets within -- within the US. And it's the application of market rules that tend to have required the FERC to move towards developing rules for a more efficient market.

Q. - So in terms of the categories of this issue falling into, that is a market rule issue or a tariff issue, are you putting it in the camp of market rules?

MR. SNOWDON: This bullet 3?

Q. - Yes.

MR. SNOWDON: Yes, it clearly -- it clearly states that.

Q. - Thank you. With respect to the fourth finding, the issue here or the finding here relates to proper pricing signals that are not being sent into the electric marketplace under the existing tariff. Is that fair?

MR. SNOWDON: Yes, that's what it says.

Q. - So in terms of categories, this would be a tariff issue as opposed to a market rules issue?

MR. SNOWDON: I interpreted that to mean energy prices actually, not tariff prices. And, again, reflective of markets and how efficient markets are operating.

Q. - So the word "infrastructure" found in paragraph 4 of this finding relates only to non-transmission facilities?

MR. SNOWDON: No, it can also apply to transmission

infrastructure as well.

I think what I was getting at is that the end price to the marketplace, which includes tariff, it includes the price of energy is really the pricing signal that is a composite.

Q. - All right. Mr. Snowdon, when did the concerns -- let me put it this way. Did the concerns of the FERC that are expressed in the NOPR, did they come as a surprise to New Brunswick Power?

MR. SCOTT: Certainly I don't think they came as a surprise.

There has been an ongoing evolution of the markets in the US for a number of years now. And this is seen as another step in the process. We have been following what has been happening in the US.

Q. - Okay. And can you help me understand what you mean by a step in the process?

MR. SCOTT: Initially if you go back to the Energy Act in the US, which I believe was in the early 1990s, indicated that there would be an energy market there. Following that, FERC ordered issue 888 which brought open transmission access. The result of the transmission FERC Order 888, it did provide good transmission access, but there were still some problems with that.

A couple that I can think of right now are that each

utility was filing a transmission tariff. And as a result of that, there would be a possibility of a number of tariffs being in series or pancaked together. So FERC took another step to address that through order 2000. They also dealt with the need to get larger regional markets. And order 2000 was dealing with that as well.

The current NOPR that we see here in the standard market design is I see another step in that they are trying to come up with a more standard set of rules that everybody can operate to. Certainly Order 2000 did not take away from Order 888. It indicated that the transmission tariff that Order 888 was coming out with would continue. The SMD NOPR on the other hand has said we can make improvements in that as well.

Q. - Mr. Scott, since you have referred to Order 2000, and I think my friend, Mr. Morrison, has provided an excerpt of the FERC Order 2000 -- let me just find it in the exhibit here. It's exhibit A-15. That document came out and was issued on December 20th 1999. Would you take that subject to check?

MR. SCOTT: Yes.

Q. - Could you turn to page 17 of the JDI-6 attachment? Have you got that, sir?

MR. SCOTT: Yes.



Q. - At page 17 of the NOPR there is a description of Order 2000, do you see that?

MR. SCOTT: Yes, I do.

Q. - When New Brunswick Power filed the current tariff application it was aware of FERC Order 2000, was it not?

MR. SCOTT: Yes.

Q. - Has there been any attempt by New Brunswick Power to address the concerns enumerated in the NOPR description and in particular under note 22 where it talks about standard of conduct violations?

MR. SCOTT: Your question is whether we addressed standard of conduct violations?

Q. - As specified --

MR. SCOTT: Or were we --

Q. - -- in FERC Order 2000?

MR. SCOTT: -- or whether we were -- we didn't specifically deal with the standard of conduct violations. We have participated in some initiatives in looking at how to address Order 2000. But we had an existing tariff and our current proposal is a FERC Order 888 tariff.

Q. - Is it FERC Order 2000 compliant? Do you know that?

MR. SCOTT: I don't know.

Q. - Have you had any experts provide you any advice about whether it is Order 2000 compliant?

MR. SCOTT: We did not have anyone look at it in terms of Order 2000.

Q. - Is there any reason why you didn't?

MR. SCOTT: Yes. We were putting forward an Order 888 compliant type tariff as directed by the market design committee in the energy policy.

Q. - So there was no contemplation of addressing the standard of conduct violations specified in Order 2000 in your current tariff?

MR. SCOTT: Not specifically, no.

Q. - Thank you. Mr. Snowdon, are you aware of whether Brunswick Power has taken exception to other Canadian electric utilities not complying with FERC Order 2000?

MR. SNOWDON: No, we have not taken exception to that.

Q. - You have not?

MR. SNOWDON: Could you ask the question again? I guess --

Q. - Yes. Are you aware of whether New Brunswick Power has taken exception to other Canadian electric utilities not complying with FERC Order 2000?

MR. SNOWDON: I am not -- I have no knowledge that -- of that.

Q. - You have some familiarity though with the Hydro Quebec 2002 decision, do you, sir?

MR. SNOWDON: I have very limited knowledge of that.

Q. - Well if you turn in to page -- or turn to page 18, and at the bottom of the page dealing with note 22 you can see that the description of the Order 2000 includes pancaking of access charges. Does that ring a bell in terms of the position that New Brunswick Power took in respect of the Hydro Quebec decision?

MR. SNOWDON: I'm not qualified to answer that. I'm not aware of the specifics of what our intervention of that --

Q. - Would it strike you as at least inconsistent if New Brunswick Power had outlined concerns with respect to another Canadian electric utility not complying with FERC Order 2000, and yet here you are today before this Board indicating that your tariff has not taken into account this Order?

MR. SCOTT: It's my understanding when you deal with pancaking of transmission tariffs that you are dealing with more than one transmission utility and certainly Order 2000 was dealing with that. It would be a necessary first step probably to ensure that the utility had a regulated tariff before you took the next step of forming an RTO that Order 2000 was looking at.

Q. - All right. Let's move on to a different area if we could, sir. I would like you to turn to page 3 of the NOPR. Just before I move there, Mr. Snowdon, rest assure

I will address this further with Mr. Marshall in Panel C, this issue of Hydro Quebec's position as -- it was his evidence in that proceeding that dealt with FERC Order 2000.

MR. MORRISON: You could obviously call him this afternoon, Mr. Chairman.

CHAIRMAN: No.

Q. - What I would like you to turn to, Mr. Snowdon, is paragraph 4. And what I would like is are your comments first with respect to the passage at the bottom of page 3, which reads, When supply and demand do not fully -- do not support fully competitive markets, market design should provide protection against market power. We seek in this rule making to put in place sufficient regulatory back stops to protect customers against the exercise of market power when structures do not support a competitive market. Market monitoring at all times and market power mitigation when needed are critical pieces of this initiative.

Could you comment on that?

MR. SNOWDON: I guess I have no reason to question this.

Q. - Well, Mr. Snowdon, is New Brunswick Power proposing in its application any additional regulatory back stops other than those contained in the 888 pro forma?

MR. SNOWDON: No. It's our position that this Board has

oversight of the tariff and the submission that's before this Board.

Q. - So in terms of any additional regulatory back stops that would be required to have your tariff approved, you have no comment on what those additional regulatory back stops should be?

MR. SNOWDON: I'm not sure what you are specifically referring to. It is a bilateral market that's going into effect.

Q. - I'm asking you, sir, of whether you have any comments or any additional thoughts on what type of additional regulatory back stops are necessary in light of the FERC's findings that the FERC pro forma 888 tariff does not include sufficient regulatory back stops?

MR. SCOTT: This particular application is for a FERC Order 888 transmission tariff, and as Mr. Snowdon has just indicated it is for bilateral type transactions where transmission customers make requests for transmission service and then utilize the transmission system. We are opening up for wholesale access at the transmission level for retail customers.

It's not a full-fledged market like the standard market design was attempting to deal with, and for the most part market power should not be an issue for

transmission customers.

There are areas where market power is an issue. Those are primarily in the area of ancillary services because those are products that have to be provided in order to support the market. And as a result of that we have put forward pricing methodologies as part of this tariff application to deal with that, and they would be at fixed prices.

Q. - Thank you, Mr. Scott. I guess my -- is it fair to summarize that statement, Mr. Scott, by saying -- and Mr. Snowdon, your previous comments -- that if there are additional regulatory back stops that are necessary, it's up to the Board to decide what those are based on the evidence of this proceeding?

MR. SCOTT: There are certainly no other back stops that are contemplated other than what is contained in this tariff.

Q. - And that tariff is based on the pro forma 888, correct?

MR. SCOTT: That is correct.

Q. - Thank you. And, Mr. Scott, there is nothing further than what is contemplated in the pro forma 888 tariff in this application dealing with marketing -- sorry, market monitoring and market mitigation as outlined in this passage I just read to you, the last sentence?

MR. SCOTT: I'm not aware of any other.

Q. - And, Mr. Snowdon, would you put that in the camp of market rules or tariff issues?

MR. SNOWDON: The tariff does provide audit capability.

That is a form of regulatory back stop. The audit through the books and records of the transmission provider would be available or are available and will be made available to this Board.

Q. - That's a discussion we had on our last day, correct?

MR. SNOWDON: Yes.

Q. - Let's move on to page 5. At paragraph 8, Mr. Snowdon, the FERC is discussing its concern and suggestion for and need of an independent transmission provider. Do you see that?

MR. SNOWDON: Yes.

Q. - I just want to understand the position of New Brunswick Power in respect of independent transmission provider. In this FERC document they define an independent transmission provider as one having no financial interest either directly or indirectly through an affiliate of a public utility. Is that a fair summarization?

MR. SNOWDON: Yes.

Q. - Okay. And is that the -- that's not what is proposed in your tariff, right?

MR. SNOWDON: No, it is not, although we support



independence as defined and as recommended by the market design committee. They certainly discussed this concern and put forward recommendations in that regard with two different models of achieving the degree of independence that they feel is necessary, keeping in mind that this independence question creating a totally independent system operator can be a very costly thing and one really has to evaluate the merits of that in light of the market opening that is proposed in New Brunswick for April of 2003.

Q. - All right. But at least in the short-term and what is applied for in this tariff you have not followed the market design committee recommendation, fair?

MR. SNOWDON: This application before this Board does not preclude that from taking place.

Q. - But you are not proposing it, correct?

MR. SNOWDON: The application before this Board is from a vertically integrated utility, NB Power.

Q. - Sir, you will be the head of the transmission -- the independent -- the dependent transmission provider?

MR. SNOWDON: That's one of those tricky questions that started this panel. Yes.

Q. - Okay. And will you be -- will your operations be governed by some form of independent body? Who will you

report to, sir?

MR. SNOWDON: As the head of the transmission subsidiary I will report to the President of NB Power.

Q. - Okay.

MR. SNOWDON: However, there is the recommendation from the market design committee that there would be an independent -- either a governance panel or an independent board that would provide oversight to the market and the market rules. That is yet to be defined and determine.

Q. - So at this present time it's just simply the plan. There is no legislation yet that either you know or I know, correct, concerning the market design and market implementation rules?

MR. SNOWDON: As of today that is correct.

Q. - And then, Mr. Snowdon, when I turn to the IR that I have referred to where there is some discussion about the intended independence, just so that I am clear, that is what you expect will happen at some point in the future, that there will be an independent system operator?

MR. SNOWDON: Yes. There will be before the market opens an independent -- either a governance panel or an ISO board that the system operator will report to.

Q. - Sorry. Did you say before April 1, 2003?

MR. SNOWDON: Before the market opens and that is scheduled

to open in April 1 of 2003.

Q. - Do you have any further information about that governance

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MR. SNOWDON: I have no definitive knowledge, no.

Q. - Thank you. Now further on in that information response,

sir, the last sentence in particular refers to the fact that the Transco and the ISO would effectively remain as one entity. Do you see that?

MR. SNOWDON: Yes.

Q. - How does that square up with the concern of the FERC found at page 5 as it relates to financial interests? How can the two, the transmission and the ISO, remain as one entity, but not have a financial interest?

MR. SNOWDON: The financial interest that this is referring to is in any market participant, if you read on in that same sentence.

Q. - I guess the simple question is, is -- are you contemplating the system operator and the transmission facility owner to have a continuing financial interest after the market opens?

MR. SNOWDON: Financial interest only in establishing the revenue requirements of that transmission entity, not in the market itself.

Q. - So that would be an indirect financial interest? The corporation, the two halves are part of the same corporation, are they not?

MR. SNOWDON: This is an independent transmission organization outside of NB Power.

Q. - A separate corporation?

MR. SNOWDON: That's what that is referring to in that IR.

Q. - That is what you are contemplating then, is it, a separate corporation?

MR. SNOWDON: That is if -- the qualifier in that IR is if that is one of the models that is being considered by government.

Q. - All right. But for the purposes of this Board the actual model that is contemplated is not known at this time?

MR. SNOWDON: For the purposes of this hearing before this Board, it is that we are submitting a transmission tariff as a vertically integrated utility. The independence of the system operator that administers this is another issue that will be dealt with.

Q. - All right. Let's move on to page 21, if we could, please. Mr. Scott, I think you were making the point earlier that the SMD model is intended to apply not only to wholesale but also retail markets, is that fair?

MR. SCOTT: I think it would be more correct to say that if

retail existed in a location then it would apply.

Q. - Fair enough. But as it relates to wholesale which is what we are here to talk about today, it is quite clear that the FERC NOPR addresses that concern, is that fair?

MR. SCOTT: Yes.

Q. - And the concern I would particularly like you to comment on is found in paragraph 31 which starts in the second sentence which says, vertically integrated transmission owners and operators continue to use their interstate transmission facilities in ways that inhibit competition in wholesale power markets as well as competition in those retail power markets where states have adopted retail choice. Do you see that?

MR. SCOTT: Yes.

Q. - Do you have any comments on that?

MR. SCOTT: Certainly there have been indications of transmission discrimination, but it doesn't happen in all circumstances. And --

Q. - Let's see if I can help you out a bit, Mr. Scott. As it relates to New Brunswick, are you concerned about this concern? Should this Board be concerned about this concern? And if not, why not?

MR. SCOTT: I don't think this Board should be concerned about discriminatory practices.

We have gone to -- made a strong effort in terms of putting together a transmission tariff that is open and non-discriminatory. We have put in place practices with a standards of conduct that would prevent that -- prevent discriminatory action from happening. We have stated our intent to treat the New Brunswick Power Generation in the same manner as other generators and to treat the New Brunswick distribution business unit as a wholesale customer.

A lot of the -- if you were to go and look at some of the -- some of the concerns that were raised by this SMD NOPR, a lot of them dealt with things like access to transmission interfaces for import to serve native load. New Brunswick has been a net exporter and some of the discriminatory practices, such as using capacity benefit margins, things like that, we do not have those in place here.

So I believe by and large that the Board should not be concerned with discrimination.

Q. - Using a FERC pro forma 888 tariff?

MR. SCOTT: That is correct.

Q. - Is one of the objectives of wholesale competition the opportunity for having additional players in the marketplace, if you will? Is that one of the objectives

that you are trying to fulfil with this tariff?

MR. SCOTT: I think that's one of the outcomes. The objective is more to provide customers at the wholesale level with choice.

Q. - If you go on in the passage, Mr. Scott, it talks about discriminatory preferences, and the discriminatory preferences that the transmission owners and operators give to their own uses of the interstate transmission grid to serve their retail customers, and it goes on to say, results in discrimination against and in costs being borne by other wholesale and retail customers who also rely on the interstate transmission facilities to buy power. And it then concludes by saying, the discriminatory preferences also create barriers to new sellers that could provide lower cost power. This could result in higher prices to the native load served by the transmission owner.

And you are saying that that is not of concern or should not be of concern to this Board in respect of your applied for FERC 888 pro forma tariff?

MR. SCOTT: I am saying that it is certainly not our intent to operate discriminatorily.

Q. - Well Mr. Scott, I guess what I am really asking is you have made your application with a FERC pro forma 888



tariff that has now been found by the FERC to have these concerns.

And I am trying to understand what is it that you are proposing to do for the purposes of this Board and this application and for the people of New Brunswick, what are you proposing to do to address these concerns? Anything?

MR. SNOWDON: I believe the issue that FERC was trying to address or attempting to deal with in terms of this particular issue related, and Mr. Scott mentioned it, was the reserve capacity on the transmission system that the transmission provider reserves for future load growth within the jurisdiction, as one issue.

And under this application before the Board, there is no reservation or pre-reservation of capacity on the transmission system to deal with that issue.

And the second one is, is reserve capacity benefit margin that is also a way of dealing with providing access to transmission for retail load. And again, there are no capacity benefit margins put forward in this application before the Board.

And by having an open access tariff that allows anybody -- there is no reserve capacity there that limits an ability for a wholesale customer to bring capacity and energy into the system to serve those loads, albeit the

transmission constraints that exist on the south to north flow through MEPCO, that we talked about the first day.

Q. - Mr. Snowdon, since you raised the issue of capacity benefit margin, can I take you to page 34 of the document. Because I think that is where it talks about this very concern.

Is that the concern that you think this earlier passage is limited to?

MR. SNOWDON: That is certainly one of them.

Q. - Okay. With respect to your tariff and what it says about capacity benefit margin, I think there is a passage found at page 117 of your tariff pro forma document, which is exhibit A-2, I believe. Could you turn to that please?

MR. MORRISON: A-3?

MR. NETTLETON: Sorry, A-3. Page 117.

CHAIRMAN: Mr. Nettleton, could you give the Board the reference again, sir?

MR. NETTLETON: Yes, sir. It is page 117 of attachment C, which is the New Brunswick Power Open Access Transmission Tariff found at --

CHAIRMAN: That is in volume?

MR. NETTLETON: A-3.

CHAIRMAN: Is it A-3? Yes, it is preferable to start with the exhibit. Then we go from -- okay. And the page

number, sir?

MR. NETTLETON: Page 117.

CHAIRMAN: Thank you.

Q. - Have you got that, Mr. Snowdon?

MR. SNOWDON: Yes.

Q. - Now you are propos' -- is it fair to say that New Brunswick Power will decide to apply CBM at some point in the future? Is that why this provision is here?

MR. SNOWDON: No, it is not anticipated that that will be used.

Q. - So there is no process contemplated in terms of how much and how CBM will be offered at this point in time?

MR. SNOWDON: It is not anticipated that that would be required. This provision is in there if in the unlikelihood that system growth or whatever caused -- this gives us the provision to reevaluate the need for that.

Q. - If you go back -- if you keep your thumb on that page, but go back to page 35 -- 34, sorry, of the NOPR. It is my understanding that part of the concern that the FERC has raised is with respect to having the method by which the CBM is calculated known and understood and be part of the public domain.

If New Brunswick Power offers CBM in the future, will NBP make its method public?

MR. SNOWDON: Yes.

Q. - Thank you. Will there be a review by an independent third party of that methodology?

MR. SNOWDON: Yes.

Q. - Thank you. Mr. Snowdon, I would like you to turn now to page 23 of the NOPR document. And the passage that I am particularly interested in is at -- starting at the top of page 23 and starts, Other opportunities for vertically integrated transmission providers to operate in ways that favor their own generation remain within the construct of the pro forma tariff. Example, preferences for native load, and network customers to reserve transmission capability, differing transmission services that raise barriers to competition, the lack of inclusion of all services under the same tariff. As noted in Order 2000, perceptions of discrimination are significant impediments to competitive markets. Efficient and competitive markets will develop only if market participants have confidence that the system is administered fairly.

Do you see that?

MR. SNOWDON: Yes.

Q. - Do you agree with the statement?

MR. SNOWDON: Yes.

Q. - How do you think this will affect the development of a

competitive marketplace in New Brunswick if these concerns are not addressed by the PUB in this proceeding?

MR. SNOWDON: Could you clarify that please? I am not sure what you mean by that.

Q. - Well if you agree with the statement and the concern that perceptions matter, right? My question is -- let me back up one more premise. And that these concerns are driven off of the use of a pro forma FERC 888 tariff, my question is how do you think this will affect the development if this Board approves your tariff, how do you think that this Board will -- how do you think that this will affect the development of a competitive marketplace in New Brunswick if these concerns are not addressed by the PUB in this proceeding?

MR. SNOWDON: The application before this Board sets the foundation for the market to come into existence.

Q. - But the tariff has been found by the FERC to have perceptions of undue discrimination, right? And that these perceptions have significant impediments to creating a competitive market, right?

MR. SNOWDON: I believe the perceptions that's being referred to here go beyond the tariff. It is in the application of markets within various jurisdictions and it is that discrimination of -- within those context that

this is referring to.

Q. - Well let's go to note 32, which is referenced at the end of that statement. And it quotes from Order -- or cites Order 2000, where it talks about the reluctance on the part of market participants to share information. Do you see that?

MR. SNOWDON: Under --

Q. - Note 32.

MR. SNOWDON: Oh, sorry, down at the bottom.

Q. - Is that a concern that this Board should be dealing with as part and parcel of this application or is that not a tariff issue but rather a market rules issue?

MR. SNOWDON: No, I believe that's a standards of conduct issue.

Q. - And how does your standards of conduct deal with this in an effective way?

MR. SNOWDON: It gives specific restrictions or provides for specific restrictions on the sharing of information between the system operator and the market participants and that deals with confidential information specific to their generator facilities as well as the knowledge of the transmission system itself.

Q. - But sir, you would agree with me that the standard of conduct that you are proposing is in fact the very pro

forma standard of conduct of FERC 888, right? It is nothing more?

MR. SNOWDON: Yes, it is.

Q. - Thank you. If I could turn the page to page 25. We are now into the camp of specific instances of undue discrimination and impediments that are cited by the FERC, do you see that? It is on page 25.

MR. SNOWDON: I'm on page 25, yes.

Q. - Okay. And do you see the heading B?

MR. SNOWDON: B.

Q. - All right. So within B and within number 1 on the next page which is entitled Transmission Market Power by Utilities that are not Independent, we go over the page to 39. And the passage I would like your comments on relate to the following statement. It starts at the second sentence. The longer the vertically integrated transmission provider can use access to interconnection or transmission service to delay or prevent entry of competing generators to its service territory, the longer it can profit from its own generation sales with limited threat of competition. Vertically integrated transmission providers have found numerous ways to delay or prevent entry of competitors, some within the existing rules and some by exceeding reasonable discretion afforded to the

transmission provider. All of these are difficult to monitor or prevent with behavioral rules.

Do you see that?

MR. SNOWDON: Yes, I do.

Q. - Do you agree with that statement?

MR. SNOWDON: I have no reason to disagree with it, although I believe it is not an issue in New Brunswick.

Q. - Why not?

MR. SNOWDON: For the reasons that I spoke about before, that there are no capacity reservations or limitations on a generator or a load reserving transmission on NB Power's system.

Q. - What about potential new market entrance, new generation entrance that want to come into the New Brunswick market and compete against the incumbent?

MR. SNOWDON: Then they are free to do so, to take service under this tariff.

Q. - All right. But this tariff, this pro forma tariff has been found by the FERC to have unjust discrimination associated with it. Why would that new market competitor want to participate in a market where there is a tariff of this sort? Is that going to promote competition in New Brunswick or not?

MR. SNOWDON: We anticipate that it will, yes.



Q. - Why?

MR. SNOWDON: Because this tariff provides the ability to --  
for a generator to come in and take service under a  
tariff.

Q. - On the basis of the FERC pro forma tariff?

MR. SNOWDON: That is correct.

Q. - And just to be clear, you are not proposing anything more  
than what is found in the FERC pro forma 888 tariff? You  
are leaving that up to the market rules?

MR. SNOWDON: No. This application is for a FERC pro forma  
888 tariff.

Q. - Thank you. Let's go to the next concern, page 29,  
paragraph 43. It is entitled Delays in responding to  
requests for service. And the concern is essentially that  
the vertically integrated transmission provider delays the  
processing of a competitor's request for a new  
transmission service.

Do you see that?

MR. SNOWDON: Yes.

Q. - Does that concern apply to New Brunswick?

MR. SNOWDON: We have specific -- in our business practices,  
specific time lines associated with dealing with service  
requests. And they are outlined in the tariff as well.

Q. - Do you have any key performance metric that you are

relying upon in this tariff dealing with the time period to deal with request for service?

MR. SNOWDON: The performance indicators put before this Board do not reflect those service requests although they are monitored internally.

Q. - So is it your position, Mr. Snowdon, that your business practices are what can be relied upon to ensure that this type of behavior, that the FERC is found to occur under the pro forma tariff, does not happen here?

MR. SNOWDON: Those business practices plus a complaint mechanism.

Q. - To whom? Who does the complaint go to?

MR. SNOWDON: It goes to the transmission provider.

Q. - And without having to get into the gory details again, can we agree that the discussion we had on day prior would apply here with respect to the complaint procedure?

MR. SNOWDON: You are assuming the complaint does not get resolved?

Q. - Yes.

MR. SNOWDON: Then it would go through the complaint mechanism outlined in the tariff.

Q. - But not to this Board, fair?

MR. SNOWDON: That is our intention, yes.

Q. - Thank you. Let's go to the next concern, Scheduling

Advantages found at page 30.

Paragraph 45 starts by saying, A vertically integrated transmission provider has a structural advantage over many competitors to make economy sales or to serve its load primarily because it has a large portfolio of both generators and loads.

Mr. Snowdon, does New Brunswick Power have both large portfolios of generation relative to other generators in the province?

MR. SNOWDON: Yes.

Q. - And does it have the same large portfolio of load with respect to participants in the electric power industry?

MR. SNOWDON: Yes.

Q. - So why does --

MR. SNOWDON: Within New Brunswick.

Q. - Within New Brunswick?

MR. SNOWDON: Yes.

Q. - So why does this concern not apply to New Brunswick Power in respect of this tariff?

MR. SCOTT: It may be true for a single independent power producer in the province of New Brunswick but New Brunswick is interconnected with Quebec, Nova Scotia and New England. And certainly there are other suppliers out there who have a large portfolio of generation as well

that could compete in this market.

Q. - Is that any different though, Mr. Scott, than any FERC regulated electric utility and the loads and generations that would exist in the interconnecting states?

MR. SCOTT: I think New Brunswick is somewhat unique.

Certainly we have discussed before the strength of our interconnections. And in fact this tariff assumes about 25 percent of our tariff revenues comes from the interconnections.

Q. - So it is the uniqueness of the New Brunswick market, its inter-ties with Quebec, that you feel is strong enough to address and mitigate this concern?

MR. SCOTT: It's certainly one aspect of it, yes.

Q. - Are there others?

MR. SCOTT: I think that the external suppliers are the primary means of mitigating this.

Q. - And the opportunity for external suppliers to mitigate this as a new incumbent or new -- sorry, a new generator wanting to compete in the New Brunswick marketplace, how does that -- or what does that new entrant, new market entrant, what could he rely upon to ensure that there will be no scheduling advantages afforded to that or afforded to the incumbent NB Power Generation?

MR. SCOTT: Our existing transmission system, we do use an

energy scheduling mechanism that is done via the same Internet access that the OASIS, which is where the transmission reservations are made, all of the scheduling is done via that mechanism.

And both the business practices and the software enables users to schedule within the limits of the business practices.

Q. - The business practices?

MR. SCOTT: Yes.

Q. - Are those business practices part of this tariff?

MR. SCOTT: They are posted on the OASIS.

Q. - Okay. Let's leave that for a minute and go to the next concern which is Available Transfer Capability at page 32.

It starts at paragraph 50.

And it indicates that A transmission provider that is non independent calculates its ATC, available transfer capability, using its own proprietary data and its own equations. This discretion gives it the ability and the opportunity to discriminate in its favor against entities that rely upon the OASIS for ATC information.

Do you see that?

MR. SCOTT: Yes.

Q. - Is New Brunswick Transmission proposing to calculate ATC using its own calculations?

\ MR. SCOTT: It uses the methodology that was developed under NPCC to calculate both TTC and ATC.

Q. - Are you willing to release to the public the data and the equations and underlying computer models it uses to calculate this?

MR. SCOTT: Are you suggesting that we submit them to the Board for review at this -- I'm not sure of your question.

Q. - Well, I think the FERC's concern is the proprietary nature of the data associated with the calculation of ATC. And I'm trying to understand what you might be able to do to mitigate this concern?

MR. SCOTT: Well, certainly our ATC calculations as they exist today all deal with interfaces to external utilities. And those ATC calculations are done in coordination with these other utilities.

Q. - Well, would you consider having a third party calculate the ATC or at least verify the ATC calculations, an independent third party?

MR. SCOTT: You are suggesting say an engineering firm of some sort, or --

Q. - An appropriate third party with expertise in the field.

MR. SNOWDON: I really don't see the need for that. The methodology that is being used to calculate that is consistent with NPCC methodology. And these calculations

are made each time a reservation is made on the system.

Q. - Well, Mr. Snowdon, then do you take exception with this concern that the FERC has raised with respect to the pro forma 888 tariff?

MR. SNOWDON: As it relates to NB Power and the NB Power transmission system or the New Brunswick transmission system, I don't see a need or an issue of discrimination here.

Q. - So this -- because of the unique situation of New Brunswick Power Transmission operating under a FERC 888 tariff, this concern does not apply?

MR. SNOWDON: Again I believe the issue relates back to the capacity reservations that the transmission providers in other jurisdictions are making on behalf of its retail or native load that brings the whole ATC calculation under suspicion. And that is not the case here. We are not reserving transmission margin for that.

MR. NETTLETON: All right. Mr. Chairman --

CHAIRMAN: We will take -- I'm sorry. Go ahead.

MR. NETTLETON: -- I'm very close to being done, sir. I have got two more areas. But I shouldn't be more than 20 minutes.

CHAIRMAN: Well, I'm going to take a 10 minute break then.

MR. NETTLETON: Yes.

(Recess)

CHAIRMAN: Go ahead, Mr. Nettleton.

MR. NETTLETON: Thank you, Mr. Chairman.

Q. - Mr. Snowdon, I would like to direct your attention now to page 32 and 33. At the bottom of 32 we are under the heading OASIS Postings, and then flipping over to page 33 starting at paragraph 55 -- sorry -- 52, the statement, the first sentence there says, manipulation or violation of OASIS Posting requirements and the commission's standard of conduct is another way vertically integrated transmission providers control their own OASIS sites are able to engage in undue discrimination.

My question regarding that statement, Mr. Snowdon, is, did New Brunswick Power consider having a third party administer its OASIS system?

MR. SCOTT: I can speak to that. In 1998 when we put our transmission tariff in place for the first time we did look at the possibilities of using other OASIS sites, and in particular we looked at the ISO New England site. But at that time their system was still -- I wouldn't say it was under development, but it was not a mature product. And they were very much involved in their own development of -- or the initial stages of their open access tariff. We are not really prepared to add another node on their



OASIS site.

So we looked at that and we looked at purchasing an OASIS site and the third option was developing our own. And out of those three that was the most cost effective and the best solution for us at that time.

Q. - And what about this time, sir where the FERC has now come out saying, we are concerned with having a vertically integrated transmission provider control their own OASIS site because of the at least perception of -- or in fact actual undue discrimination. Have you considered now the idea of having a third party administer that site?

MR. SCOTT: We again have looked in the same way that -- similar to what we did before -- looked at various options. We still consider that the most cost effective and best solution for NB Power at this point in time is to further develop the existing OASIS site.

All -- one of the features of our particular site, as I have already mentioned, is that it does have energy scheduling capability that some of the other sites would not have, and if they do they wouldn't be compatible with our energy management systems.

So it really has not been a concern internally that certainly all of the -- all of the reservations are done electronically and we don't feel it's a concern. This

particular area again is one of the areas that I think FERC in its SMD was concerned not about the tariff itself or the OASIS rules, but rather the use of that, and we believe that in New Brunswick that we not only have a proper OASIS system, but that it's operated properly.

Q. - Mr. Scott, I think you indicated to me earlier that when the market opens in April, or targeted for April 1, 2003, that there would in fact be an independent system operator. Is that right?

MR. SCOTT: That's my understanding according to what has been announced by the government.

Q. - Will the OASIS site be operated by the independent system operator when the market opens?

MR. SNOWDON: Yes.

Q. - Thank you. Let's move now onto the last of the concerns that I have to discuss with you gentlemen, and that's on page 36, dealing with transmission loading relief.

Now at paragraph 57 on there is the discussion of the opportunity for anti-competitive behaviour as it relates to TLR.

Do these concerns in your view apply to this tariff

and to the

situation in New

Brunswick?

MR. SNOWDON: No, they do not.

Q. - Why not?

MR. SNOWDON: TLR's are generally associated with loop flow issues and having a single tie line with New England loop flow is not an issue and therefore the invoking of what they call transmission load relief is not an issue and should not be an issue into the future, nor is it an issue in New England.

Q. - So in your view that's the only instance where transmission loading relief would happen in New Brunswick?

MR. SNOWDON: As we stated before in the presentation, we have a very robust transmission system and it would -- it is not anticipated that there would be a requirement certainly within the province to deal with congestion. And again without the loop flow issue into our interconnections, it's not an issue on the interconnections as well.

Q. - Mr. Snowdon, isn't it true though that under your tariff the curtailment of firm transportation service is ultimately held at the discretion of the transmission service provider?

MR. SNOWDON: That is true under very specific rules outlined in the tariff specific to the degree of firmness of the reservation.

Q. - Maybe I can have you turn to page 33, for example, of your transmission tariff, which is -- I hate to do this to

you, Mr. Chairman, but I will try -- Exhibit A-4, attachment C, page 33.

MR. MORRISON: Exhibit A-3.

Q. - Sorry. Wrong again. Page 33

MR. SNOWDON: 13.6?

Q. - That's correct. And in particular I'm looking at lines 22 through 27. Isn't it that discretion that's described there which is of concern to the FERC as it relates to the pro forma tariff?

MR. SNOWDON: As it relates to 57 in the NOPR?

Q. - Yes.

MR. SNOWDON: I don't believe so, no.

Q. - Can you explain a bit further about why?

MR. SNOWDON: I believe the issue under 13.6 in the tariff is dealing with strictly emergency situations under which the system operator deems the system to be at risk, and in order to relieve that risk they need to bring in emergency supply from adjoining neighbours. In other words, the capacity available within the New Brunswick system is insufficient to meet the load and the reserve, capacity reserve that we talked about, requirement, and therefore they will do whatever measures they require to do so to meet that obligation to the load.

I might point out that those discretionary matters

have to be documented and posted after the fact to ensure the market participants that there was not undue discrimination applied during the exercising of those rights as a transmission operator.

Q. - Right. And those instances are perhaps why the FERC can make the conclusion or comment at paragraph 58 that there has been a sharp increase in the number of TLR's used in some regions. I'm assuming that the fact that they are posted gives rise to the opportunity for a comment to be made about the statistic. My real question --

MR. SNOWDON: Again TLR's are a non-issue in New Brunswick and -- because of the non-existence of loop flows. Therefore transactions that are scheduled reserved on the transmission system actually do flow. The issue with TLR's is -- with parallel flows is that energy that is scheduled on one line may in fact be going into an area on another line and taking up capacity on that line, and therefore TLR's are invoked to limit the amount of transfer going on at that time which is non-existent in this tariff.

Q. - Perhaps we can resolve it this way, Mr. Snowdon. Under 13.6 the discretion that is found at line 24 does indeed speak to emergency situations, but also other unforeseen conditions -- condition -- impairs or degrades the

reliability of the transmission system. Would that be something that once the market opens and the system is operated by an independent party, would that independent party be responsible for exercising the discretion that is found in this section of your tariff?

MR. SNOWDON: Yes.

MR. NETTLETON: Thank you. Mr. Chairman, that concludes my questions.

CHAIRMAN: Thank you, Mr. Nettleton. Mr. Morrison, do you have --

MR. MORRISON: A brief redirect, Mr. Chairman.

CHAIRMAN: All right. Mr. MacNutt, it's my understanding that Board counsel has no further questions?

MR. MACNUTT: That is correct, Mr. Chairman.

CHAIRMAN: Okay.

MR. MORRISON: Just to complete the record, Mr. Chairman, my friend has introduced portions of the NOPR that have just been crossed on. We would like to introduce one page. I don't intend to ask any questions on it, just to complete the record. It may be relied upon in our argument.

CHAIRMAN: Have you shown that one page to all? We will wait while that one page is being passed around. And I have a matter that really I probably should have approached when the Nova Scotia -- sorry the Emera panel

was on, but really I can't ask Emera to file it, so -- I'm asking NB Power on an undertaking basis, or perhaps this panel if they know, when does the contract, Mr. Morrison, that you referred to between NB Power and Nova Scotia Power dealing with the use of NB Power's transmissions facilities to service the contract on PEI expire?

MR. SNOWDON: I would prefer to take that as an undertaking.

I think I know the date but I would rather confirm it and give a precise date.

CHAIRMAN: That's fine, Mr. Snowdon.

MR. MORRISON: The only -- and perhaps while that is being passed around, Mr. Chairman --

CHAIRMAN: I'm sorry?

MR. MORRISON: -- I can ask my one question on redirect to this panel while we are waiting for that exhibit to --

CHAIRMAN: Well the exhibit is now here, so I would rather

--

MR. MORRISON: Okay. Fine.

CHAIRMAN: -- clear that off my -- any objections to that being entered? No. Okay. That will be A-21. It is a one page exhibit.

All right. My fellow commissioners just indicated probably in addition to what I had asked that if there is a provision in that agreement with Nova Scotia Power that



it can be extended, that you let us know about that as well. We are interested basically is when will that agreement be concluded. Okay?

MR. SNOWDON: Yes.

CHAIRMAN: Go ahead, Mr. Morrison.

REDIRECT EXAMINATION BY MR. MORRISON:

Q. - My one question, Mr. Chairman, is for Mr. Scott. And it arises out of questions from -- well actually a statement from Mr. Sidebottom this morning in dealing with losses, the question of losses and in Quebec in particular. Mr. Sidebottom mentioned that the difference between past specific losses and network average losses in the Quebec situation was only .05 percent. He then compared this difference to our IR response showing that past specific losses in New Brunswick vary from .5 percent to 8 percent.

And I would ask Mr. Scott if he has any comments on Mr. Sidebottom's statement?

MR. SCOTT: Yes. I disagree with his statement that the variation in losses on a path basis in Quebec is very minimal. In fact, there are significant differences in the amount of losses. If you take the path from New Brunswick to New York, the losses are actually negative. And if you go in the other direction, they are significantly positive. And I understand that Mr.

Marshall submitted evidence to the Regie on that particular matter. So I would say that if anything the variation in losses on the Quebec system is even greater than it is on the New Brunswick system for a path by path basis.

MR. MORRISON: That is the end of my redirect, Mr. Chairman.

There is one other issue though.

CHAIRMAN: Go ahead, Mr. Zed.

MR. ZED: Well I'm just -- it occurred to me that that might be rebuttal evidence as opposed to redirect.

CHAIRMAN: I'm glad it occurred to you that that was. It certainly did to me, Mr. Morrison. That is an expansion on my understanding of redirect certainly. However it's there.

MR. MORRISON: My understanding of redirect, Mr. Chairman, is that if something new comes up in cross examination then I have --

CHAIRMAN: All right. But it didn't come up in cross --

MR. MORRISON: True. True.

CHAIRMAN: We won't get into that. So that is the conclusion for this particular panel. What is your preference in reference to Panel B?

MR. MORRISON: Well, Mr. Chairman, there is one other issue I would like to raise with the Board. I had discussed it

with Mr. MacNutt at the break. There were a couple of points that came out of Emera's evidence this morning that we would like to examine this evening to determine whether we will want to recall Panel A for rebuttal evidence on those points. If that is the case, we would propose recalling Panel A first thing in the morning to address the rebuttal evidence. But we haven't made that decision. We will look at it tonight to see whether it's worthwhile doing or if it needs to be done.

CHAIRMAN: All right. Well on that basis I guess what you are saying is that we will adjourn over now. Mr. Zed?

MR. ZED: Well I guess --

CHAIRMAN: Maybe if I -- I don't want to interrupt and you will have your full say but why don't you give them overnight to see what their position is rather than starting to argue it now? But your choice.

MR. ZED: So I can take it it is not a forgone conclusion they will be allowed rebuttal, is that --

CHAIRMAN: I have no idea. This is the first I have heard of it.

MR. ZED: Fine.

CHAIRMAN: And I just know that Mr. Morrison has indicated he may or may not do something. That's all I know.

MR. ZED: Thank you. We will address it in the morning.

CHAIRMAN: We will rise until 9:30 tomorrow morning then.

(Adjourned)

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

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