

INDEX

Cross by Mr. Coon - page 458

- page 510

- page 552

Cross by Mr. Secord - page 476

Cross by Mr. Thompson - page 542

New Brunswick Board of Commissioners of Public Utilities

In the Matter of an application by NB Power dated January 8, 2002 in connection with a proposal for Refurbishment of its facility at Point Lepreau.

Delta Hotel, Saint John, N.B.
May 29th 2002, 9:30 a.m.

Henneberry Reporting Service

New Brunswick Board of Commissioners of Public Utilities

In the Matter of an application by NB Power dated January 8, 2002 in connection with a proposal for Refurbishment of its facility at Point Lepreau.

Delta Hotel, Saint John, N.B.
May 29th 2002, 9:30 a.m.

CHAIRMAN: David C. Nicholson, Q.C.

COMMISSIONERS: Ken F. Sollows
Jacques Dumont
H. Brian Tingley

BOARD COUNSEL Peter MacNutt, Q.C.

BOARD SECRETARY: Lorraine Légère

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CHAIRMAN: Just a couple of things. Commissioner Richardson is not feeling well today, so that means that he is off the panel. That's unfortunate for a number of reasons, and I'm feeling overwhelmed by engineers.

And the second thing is that I indicated that within 24 to 48 hours we expected the final report to be in from the consultants in reference to DSM. And I have got a statement here written by Board Staff, and which I certainly approve.

Board Staff was of a view that it was important to obtain an independent analysis of NB Power's evidence concerning demand side management, DSM.

The purpose was to review the reasonableness of the prefiled evidence, and in particular to determine if NB Power had underestimated the savings available from DSM. DRI-WEFA Energy Group -- and I don't know how you pronounce that anachronism. But anyhow, Energy Group was retained to review the DSM evidence. Their report has been received and copies are available from the Board Secretary.

Staff has reviewed the report and informs us that the consultant's conclusion is that NB Power has overstated by a considerable margin the savings available from DSM. For this reason staff is recommending that the consultants not be called as witnesses. Staff believes that little value would be provided and therefore no need to spend more public money. The Board accepts that recommendation.

Now are there any preliminary matters this morning, Mr. Hashey?

MR. HASHEY: Yes. Thank you, Mr. Chairman. There are a couple of preliminary matters. I would ask the indulgence of the Board to allow me to ask for a clarification from Mr. White. Now I haven't talked to Mr. White, but I have been asked to request this. Is the issue of yesterday or this morning's newspaper suggested that NB Power had paid some \$7 million for tooling. And I would like Mr. White,

if I can have your indulgence, to try to clarify that point.

CHAIRMAN: I thought it was perfectly clear yesterday what was -- and it's on the record, I believe. But if you want to ask a couple of questions on that, Mr. Hashey, go ahead.

MR. HASHEY: Thank you. And, Mr. White, could you clarify that, as exactly what has happened in that area?

MR. WHITE: If I could reference the Board to A-13, under PNB-9. PNB-9 refers to the retubing contract. And near the end of that contract in part 4, page 3 -- it is the table on part 4, page 3, section 4.2.2.2 talks about payment milestone schedule.

And in it it shows Phase 1. And at the end it shows a subtotal of Phase 1 work which is 2.43 percent of that contract which is approximately the \$7 million that I talked about yesterday. And what is included in that is work that is preliminary design work to be able to properly understand the fuel channel changeouts, the assembly changeouts.

And as a result of that the necessity was for AECL on their part to develop -- they took the initiative to develop certain tooling to be able to demonstrate that they could actually do this in accordance with the times

and schedules that they have identified in the contract. And so they actually developed this tooling at their own cost.

And what we paid for are the four items that are shown there, submission of design requirements and preliminary design descriptions of fuel channel assembly and Calandria tubes, submission of preliminary waste storage facilities, submission of preliminary site plans and submission of preliminary piping.

So what we really paid for here is preliminary engineering to be able to execute this work. And part of that was validation of how they do the fuel channel work.

And AECL themselves invested in building the machines to validate that they could do it in accordance with what they had submitted to us. So it is really all engineering work that we have actually paid for here, not equipment.

MR. HASHEY: Thank you, Mr. White. It would be interesting to see if the trial in this matter will come out the same way in the House today.

The other two areas -- or the other area that I would like to address, Mr. Chairman, is the issue of the documents that were requested yesterday. There are three, I believe.

One document was I believe requested by Commissioner

Sollows which was the critical path document. Now we have that document. And we have no problems obviously with the Commissioners seeing anything that they think is relevant.

And similarly the Ernst & Young report, I have it here, that was requested by my friend Mr. Coon. And also the question of the refurbishment, the codes of standards review.

Now these documents have commercial value. And I think it would be worthwhile in having the witnesses explain their concern with the release of these documents to the public in one respect. The commercial value is that each one of these documents has information that current negotiations are taking place with Hydro Quebec to share the costs.

Obviously if they get them through this process, as they have a lot of other things in this process, it is going to be a loss to the taxpayers of New Brunswick. And I think we need probably more than just me saying that.

Really what I would like to do is address two witnesses and have it on the record as to why they are concerned and what the significance of these documents might be to Hydro Quebec, and then try to find a way that we could share them with the parties that are interested but somehow not lose the value that we have in this work,

in this considerable work.

And a great amount of expense has been spent in trying to have a sharing arrangement with the other utility which is currently looking at this refurbishment process.

With your indulgence I would ask, first of all, that Mr. Groom possibly would address the latter two documents and indicate how and why they would be significant to NB Power in its negotiations. And then Mr. Eagles or possibly even Mr. Eagles first could deal with the critical path information.

We have these here. We have no problem with sharing them, particularly with the Board. That is not a problem at all. And it is just the other aspect of them. It seems that we are going, you know, on and on in the process. We have had a lot of -- from the latter two documents we have had a lot of disclosure.

I mean, if you look at the books there has been a lot of disclosure. And some of these have had commercial value, that we have decided that in this process we obviously had to provide. But I just wonder if the end is in site, that is all.

So with your indulgence could I ask these two people just to put on the record what the value would be?

CHAIRMAN: Yes. Go ahead.

MR. HASHEY: Okay. Let's start then with Mr. Eagles. It seems that the critical path document -- can you indicate the significance of this or if it would have any commercial value and if so why?

MR. EAGLES: Thank you. The work that has been undertaken in Phase 1 was to establish the schedule for the project. And as part of that schedule work, considerable work was put into that by AECL. And there are pieces of that work which were in fact generated by our NB Power team.

The fact is that even yesterday there were folks from Hydro Quebec in our offices discussing the schedule that we have put together and trying to come to an arrangement on what value it has to Hydro Quebec so that they don't have to restart the process from the outset and can take some value from that.

And so we have had a process in place to share some of our documents through Phase 1 with Hydro Quebec and have in fact received revenue for those. I think this is just another aspect of where an opportunity might be lost in this sense.

MR. HASHEY: Thank you. With respect to that document, I think it has a different significance possibly than some of the others. Maybe if the other intervenors had no objection we could certainly supply that to Mr. Sollows.

I mean, I don't have a problem with that.

And I do respect the needs of the Commission. And anything that the Commissioners desire I think they should have if it is relevant to them in their decision-making process.

CHAIRMAN: The difficulty, Mr. Hashey --

MR. HASHEY: I know.

CHAIRMAN: -- and you are fully well aware of that, is that -- and we have gone through it a number of times, is the Board doesn't want to accept things in confidence.

Because if -- the courts would say our decision was void ab initio -- and of course this is a recommendation hearing, but still the same principle is there, is that we would like it to be reviewed by all of the parties as well as Board members.

We will just take -- let's just deal if we could with the critical path document and then go on to the other two. And I just want to have an opportunity to talk to my Commissioners about it.

And we will step out in the hall. And when we come back in I will ask the others as well. I want to get a little better sense of what we are dealing with here, okay. We will back in two or three minutes.

(Short Recess)

CHAIRMAN: We had a fulsome discussion. I think I understand a bit better. I will call upon the intervenors for their input into the question as to whether or not this critical path document should be -- should remain confidential for commercial reasons or if it in fact should form part of the record in this hearing. Atomic Energy of Canada Limited, Mr. Miller, have you any comments you wish to make?

MR. MILLER: We take no position on the matter.

CHAIRMAN: Okay. And Canadian Unitarians for Social Justice and Saint John Citizen Coalition for Clean Air?

MR. DALZELL: Our position, Mr. Chairman, would be that this would be important to have in the public record. It's been identified by the other intervenor and we would support it being made available.

We -- just in terms of the process, if it is going to be made available, we believe it should be in a full manner and not on a selective basis.

So that would be our position on this matter. Thank you.

CHAIRMAN: Okay. Thank you, Mr. Dalzell. Mr. Campbell, City of Saint John have any comments?

MR. CAMPBELL: No comments, Mr. Chairman.

CHAIRMAN: Thank you. Conservation Council, Mr. Coon?

MR. COON: Yes. Good morning, Mr. Chairman. Well this document contains critical information on the time line of the project and the timing of the project is vital to determining whether or not the cost estimates are reasonable, because as we know, the more delay there is on the project the higher the costs. So we need to have this document to be able to evaluate the adequacy of their cost estimates.

CHAIRMAN: Thank you, Mr. Coon. Mr. Craik, he is not here this morning. Energy Probe is not here. Mr. Gillis is represented by?

MR. ALBERTS: Mr. Alberts.

CHAIRMAN: Mr. Alberts, right.

MR. ALBERTS: Yes, Mr. Chairman. We would prefer that the document not remain confidential.

CHAIRMAN: Okay. J. D. Irving Limited?

MR. KENNEY: We don't take a position on this.

CHAIRMAN: Thank you. Mr. LeBlanc is not here. The Province, Mr. Hyslop?

MR. HYSLOP: Thank you, Mr. Chairman. I was wondering if it might be possible to put a few questions by way of a cross-examination on the evidence given by Mr. Eagles, just to get a little better feel what type of information might be in this document and what the nature of the

negotiations with Hydro Quebec might be, because -- and I say that because as I understand it, you have to assess the quality of the information in it against what the financial risks to NB Power might be, and I don't think we have a lot of detail on that. It should not take a long time, couple of minutes I would --

CHAIRMAN: Mr. Hashey, any problem with that?

MR. HASHEY: No problem.

CHAIRMAN: Okay. Go ahead, Mr. Hyslop.

MR. HYSLOP: Mr. Eagles, looking at that document, as I understand your evidence you are in a process of negotiations with Hydro Quebec whether to provide this document to them, am I correct?

MR. EAGLES: That's correct.

MR. HYSLOP: And I take it that essentially you are taking the position we should sell this to Hydro Quebec for a certain price because of the work and effort NB Power and AECL have put into producing the critical path document?

MR. EAGLES: That's correct.

MR. HYSLOP: And now I'm just trying to get a feel for the price range for this type of document, and I don't want necessarily final numbers, but are we talking millions of dollars for this document?

MR. EAGLES: I don't believe it would be in the million

dollar range, no. Certainly we believe that the effort expended to build this document would be in the -- probably in the couple hundred thousand dollar range. And certainly our discussions with Hydro Quebec on the sharing of technical information like this goes to a sharing of those costs.

MR. HYSLOP: Okay. So -- and I'm not going to ask for anyone's final position, but we are talking maybe between 100,000 and 300,000 is what the price tag would be?

MR. EAGLES: Perhaps. And again we haven't finalized the applicability and the total cost of the project.

MR. HYSLOP: Okay. Now I understand that this would be a document which details out many of the critical paths that were referred to I think in one of the supplemental interrogatories of the Province of New Brunswick, is that correct?

MR. EAGLES: Correct.

MR. HYSLOP: And it also set out matters such as critical time periods for certain things to be completed to go on to the next step?

MR. EAGLES: Yes. The schedule is linked from one activity to the next.

MR. HYSLOP: Right. And does it also contain alternatives if there are delays with completion of certain steps?

MR. EAGLES: The schedule identifies the amount of float I guess that is in existence on each of the steps as you go through, and where I guess the critical path exists there is no float.

MR. HYSLOP: Right. And would it also contain contingencies of alternative paths if something comes off the rails at a certain point in time?

MR. EAGLES: I don't believe the schedule as it exists today has that level of detail.

MR. HYSLOP: Thank you, Mr. Chairman. The Board has to rule with respect to the type of benefit that might be available to NB Power from withholding the confidential contract and a couple of hundred thousand dollars is a lot of money admittedly. At the same time we are evaluating a significant expenditure that is in the \$853 million range and the risks that are associated with it. We would be of the view that the request of Mr. Coon, the Conservation Council, would seem to be warranted in a balancing of those two issues.

CHAIRMAN: Thank you, Mr. Hyslop. Saint John Energy?

MR. YOUNG: No comment.

CHAIRMAN: All right. Mr. Hashey, the Board will decide that, but I think what we will do is just go on to the second thing, which I understood to be the Ernst Young

report.

MR. HASHEY: They are similar but maybe have little variances.

CHAIRMAN: Yes.

MR. HASHEY: I would like, if I could, address to Mr. Groom the question -- there are two things that were requested.

One is the Ernst & Young report, which is called the Risk Assessment report, which I have here. This document is voluminous, as you can see. It was an expensive document, we can talk about that. And it has at the front of it an executive summary. Maybe I could address to Mr. Groom comments on that document.

And also the other document that was requested that I have here which is entitled -- it's from Energy New Brunswick to the Canadian Nuclear Safety Commission. The subject is PLGS, which we know what that stands for, refurbishment, completion of codes and standards review, and I would ask Mr. Groom to comment on the commercial significance, if any, of these documents vis-a-vis Hydro Quebec.

MR. GROOM: Thank you, Mr. Hashey. On the issue on the Ernst & Young report, I'm going to defer, if that's all right, to Mr. Eagles and let him speak about that, and I will speak to the codes and standards document.

MR. HASHEY: Thank you. Is that okay, Mr. Chairman?

CHAIRMAN: Yes.

MR. EAGLES: Again the work that was performed by our project management team in preparation of evaluation of risks associated with the project is summarized in the document that you have. We completed this work under the management of the Ernst & Young team and feel that we have I guess the basis for a good understanding of the risks in the project, and certainly that understanding would be of value to other parties. We have not specifically entered into negotiations on this document with Hydro Quebec, but we believe this document, as many others, have commercial value due to the significant effort that has been placed into the evaluation as well as, you know, the similarities with the project that we have and the project that Hydro Quebec would be proposing to move forward on and are in the earlier stages of doing so today.

So in that light we believe that this has potential commercial value. The value of this document, if I can speak to that, is about \$200,000.

MR. HASHEY: Mr. Eagles, the executive summary, what would be your views on the release of that as against the release of the completed and detailed report which I think is summarized in about a eight -- sorry -- seven page

document.

MR. EAGLES: Certainly the executive summary is less the details that went into the entire project of evaluation of project risk, and most of that -- the contents of that were in fact contained in the minutes of the Board meeting that we discussed yesterday and the risk evaluations that we reviewed with Mr. Coon in the evidence. But I think that it explains the process that we went through to arrive at that list and what the outcome of that was.

MR. HASHEY: Okay. Then, Mr. Groom, would you address the second document, please, which may be more significant?

MR. GROOM: Yes, I will. The codes and standards document is part of a matrix of documents which we have had direct discussions with Hydro Quebec about. They include all the process procedures we carried out during Phase 1 for the conduct of such things as our total safety analysis. And each piece then has been incremented out and explicitly identified as a process and a document which would have value to Hydro Quebec. And for each of these then we have offered a process of negotiation where generally we would expect to recover at least half the cost, depending on the applicability to Hydro Quebec.

In the case of the codes and standards, that particular piece we have had direct negotiations with them

on. They have expressed a desire to procure that from us.

The cost to us has been about \$685,000. And as we have gone forward, many of the documents which we have generated during Phase 1 for the process procedures we have already exchanged with Hydro Quebec and this is just part of an ongoing discussion to deliver -- be arranged to deliver those to them.

Of course this process has been slowed down while we go through this PUB process because Hydro Quebec are able to get some of the documents we have been negotiating through the process.

So in summary then on this particular one, this does have certain very distinct commercial value to us in terms of our exchange with Hydro Quebec.

CHAIRMAN: Once again on those two documents, AECL, Mr. Miller?

MR. MILLER: These are documents which are under the control of NB Power and although we appreciate the issues of commercial confidentiality we take no position on this issue.

CHAIRMAN: Okay. Thanks, Mr. Miller. Mr. Dalzell for Canadian Unitarians for Social Justice and Saint John Citizens Coalition?

MR. DALZELL: Thank you, Mr. Chairman. We support the

request of the intervenor and believe the document mentioned, particularly the codes and standards and the risk assessment is in the public interest to release since the material, you know, could have a clear understanding for the public as to the impact of the proposal. So our position would be that it would be recommended that these documents be made available to protect the public interest and for the public need to know in full detail information that has already been introduced in -- by the Conservation Council, and we support their request. Thank you.

CHAIRMAN: Thank you. The City of Saint John have any comments, Mr. Campbell?

MR. CAMPBELL: No position, Mr. Chairman.

CHAIRMAN: Thank you. Mr. Coon?

MR. COON: Mr. Chairman, as I mentioned on Monday in the appearances, Mr. Secord has joined Mr. Thompson and myself. There are two documents here at issue and Mr. Secord will address the issue of the Ernst & Young study and then I will follow with the issue of the codes and standards review.

MR. SECORD: Mr. Chairman, I would like to be given the opportunity to cross-examine Mr. Eagles on the witnesses with respect to the Ernst & Young study for additional --

CHAIRMAN: I don't think Mr. Hashey has any difficulty, if

you have some questions that you want to put.

MR. HASHEY: No.

CHAIRMAN: Go ahead, Mr. Secord.

MR. SECORD: You indicated that NB Power paid about \$200,000 to the Ernst & Young study. Is that correct?

MR. EAGLES: That would include some of the NB Power resource time that was allocated to that work, yes.

MR. SECORD: How much did you pay Ernst & Young for the study?

MR. EAGLES: I believe that was in the order of \$175,000.

MR. SECORD: This study, as a lot of studies at NB Power, are subject to the Right to Information Act in New Brunswick. Are you familiar with the Right to Information Act?

MR. EAGLES: That is not a matter of my expertise.

MR. SECORD: Most of the internal documents are available through our Right to Information. Certainly I would argue that this one would qualify. And so my question to the Board, is there any information that these Board members have which would suggest that the Ernst & Young study would not be available under New Brunswick's Right to Information legislation?

CHAIRMAN: I don't really know what relevance that has, Mr. Secord. We have the jurisdiction authority to order that

it be made public or filed in confidence, et cetera. So what is under the Freedom of Information Act this morning is not really terribly relevant.

MR. SECORD: Very good. My last question is for the Ernst & Young study, do you -- as with the critical path study -- have some ball park estimation of what you can sell it for?

MR. EAGLES: Again, our discussions with Hydro Quebec enter into the level of relevance that each of the documents has for them particularly. And then we enter into a cost sharing arrangement on the basis of the direct relevance.

We haven't entered into that negotiation at this time.

So it would be premature for me to try to define that. But we believe that it may be approaching -- it may be approaching, you know, 50 percent of the value of the document.

MR. SECORD: At present do you have a memorandum of understanding with Hydro Quebec with respect to the sharing of information and the pricing of that information?

MR. EAGLES: That is correct.

MR. SECORD: That ends my questions on that document. If it is appropriate, I will just finish with my argument?

CHAIRMAN: Please.

MR. SECORD: From our view the Ernst & Young study is very important for understanding the risks associated with this project. It is the one document that seems to assign a dollar value to those risks. And a key part of this hearing is to establish the costs associated with this project. And we believe that that is a crucial document to evaluating the adequacy of the applicant's estimate of those costs.

CHAIRMAN: Thank you, Mr. Secord. Mr. Craik is not here. Pardon? I'm sorry.

MR. COON: This was a two part. Just one quick question through you, Mr. -- well, not through you -- but if I am allowed one quick question for Mr. Groom on the Codes and Standards Review before I make the argument.

CHAIRMAN: Yes.

MR. COON: Mr. Hashey, sorry. Mr. Groom, is there any intent to also sell this document the Codes and Standards Review to Hydro Quebec?

MR. GROOM: Could you please repeat the question?

MR. COON: Sorry. Is there any intent to sell this document, the Codes and Standards Review to Hydro Quebec as well?

MR. GROOM: Yes.

MR. COON: But you said that this was a submission to the

Canadian Nuclear Safety Commission?

MR. GROOM: Yes.

MR. COON: Two questions, sorry about that. Well, Mr.

Chairman, this Codes and Standards Review has -- Mr. Groom just clarified it was a submission from NB Power to the Canadian Nuclear Safety Commission, the public's regulator for nuclear safety.

I don't know if they know that NB Power is intending to peddle things that they sell them -- send them. But this would seem to be an important public document to us.

Because what we have here is NB Power, who is trying to make the argument to the nuclear regulator that the reconstructed Point Lepreau should not meet the latest Canadian Standards for nuclear safety. Why? Because it would increase their costs of the project. It would increase the scope of the project and up the cost and make it look less desirable in terms of their case.

So again on that, this is a document submitted to the Canadian Nuclear Safety Commission, the public regulator is part of the regulatory process over time with respect to any possible regulatory approvals for reconstructing Point Lepreau. And given that it contains the very information that we need to know with respect to what particular modern nuclear safety standards that the

applicant would like to avoid having to meet it at Point Lepreau if it were rebuilt and give us some sense of what sorts of costs they are attempting to avoid. Thank you.

CHAIRMAN: Thank you, Mr. Coon. Just before I go on with the rest of the intervenors, it does, you know -- anything that is filed with this Board is public. It is as simple as that, unless confidence is requested, et cetera.

Now nuclear being nuclear, I suppose it is not the same with the Canadian Nuclear Regulator. Or, are you aware if their documentation is public?

MR. PILKINGTON: Just in terms of the Canadian Nuclear Regulator, the CNSC or Canadian Nuclear Safety Commission, we provide them with a variety of types of documentation.

And much of that are reports that we produce and submit to them to go on the public record.

We also submit to them documentation that is proprietary in nature. And they respect the proprietary nature of those documents.

CHAIRMAN: Okay. Thank you.

MR. SOLLOWS: This particular document is of the latter class and not the former.

MR. PILKINGTON: I am not familiar with this document. And so it would have to go to somebody else. I wasn't involved in the submission of that.

MR. GROOM: We have made the regulator aware of the --
excuse me. We have made the regulator aware of the
variety of documents which we would expect to exchange on
commercial value basis.

In regard to this particular one, I am going to have
to look at the discussions that were carried out in terms
of the -- the proprietary nature of it. But certainly it
is in the envelope of documents which we would identify w
are expecting to get commercial recovery with the -- our
sister utility, or sister utilities who might be
interested in using this -- these processes we have
developed.

CHAIRMAN: Thank you. Mr. Albert?

MR. ALBERT: Mr. Chairman, I respectfully request the
indulgence of the Board to allow Mr. Gillis, who is absent
at the moment, to reply to these documents in person. He
will be with us shortly.

CHAIRMAN: Well we will see how far we get. I have awaited
for Mr. Gillis on occasion before. J.D. Irving Limited?
If there are no comments, just nod your head and that is
good. Okay.

Mr. LeBlanc is not present. The Province of New
Brunswick, Mr. Hyslop?

MR. HYSLOP: Two points, Mr. Chairman. I am just trying to

put some perspective on what this is all about and the claims for commercial efficacy of maintaining confidentiality of these documents.

As I understand it, New Brunswick Hydro is going forward with the refurbishment or attempting to go forward with the refurbishment of Point Lepreau, which is a CANDU reactor, which is the same type of CANDU reactor that Hydro Quebec apparently has in Gentilly.

They are practically the same age. And Hydro Quebec is facing the same type of issues that the Province of New Brunswick and Hydro -- New Brunswick Hydro are. It would have seemed to me to have made eminently good sense for Hydro Quebec and New Brunswick Hydro to have pooled resources some time ago with regard to the Phase 1 development of this project. And to be bartering documents for 100 and \$200,000 apiece at this stage it doesn't -- the work Mr. Eagles uses, the negotiations are premature are rather -- and with the greatest respect to the gentleman -- I would suggest maybe they are 18 months or two years too late.

I am just quite surprised that this sharing of information within the nuclear energy industry hasn't taken place. And to be taking the position now is it is going to cost us commercial resources, it just seems to me

that that was not well thought out. Because they knew they were going to be before this Board.

The specific statement of Mr. Eagles was Ernst & Young study was an independent evaluation of the risks. This is by an international accounting firm, a business advising firm whose reputation I think is beyond repute. I can't think of any piece of independent evidence that could be more critical to this Board at the end of the day. And I -- and although I hate to cost another 100 or \$200,000 to NB Power, this goes right to the very heart of the matter.

With regard to the Codes and Standards, I am not familiar enough of what they may or may not contain to comment. But generally speaking I would support the right of the other intervenors.

But on the first one, the independent evaluation of the risks, you know, if that report happened to say that the risks are unacceptable or would be very damaging or if it was to say that they are very acceptable, it would be very important at the end of the day. I will leave it with that.

CHAIRMAN: Thank you, Mr. Hyslop. Does Saint John Energy have any comments?

MR. YOUNG: Yes, Mr. Chairman if this document is a

proprietary document, we don't mind it being confidential.

But if it does have public access or the public can get a hold of it, it should be available to the hearing.

CHAIRMAN: Mr. Hashey, do you have any --

MR. HASHEY: Yes. Really, we are just talking about money here. And if the Province of New Brunswick representing the people of New Brunswick don't care about the money, we are sort of getting the impression that it is not significant enough to them, that possibly you should have those documents. There is nothing here we want to hide, absolutely nothing.

CHAIRMAN: That leaves me in a quandry, Mr. Hashey. What are you saying? As Mr. Goss would say, what do you say when you -- what do you mean when you say no? What are you telling us here? Well are you saying that you are withdrawing your objections?

MR. HASHEY: No. I think it is important that the objections are on the record and they are ruled upon. But I have heard the position of the Province, who I presume are representing the tax payers. And if it is not significant, then what can I say.

I mean, if the documents are significant and people want them, you should have them.

CHAIRMAN: All right. We will take our mid-morning 15

minute break and we will rule when we come back in, in reference to them. Thank you.

(Recess)

CHAIRMAN: Mr. Albert, I understand that you have some instructions from your principal, as we lawyers would say.

MR. ALBERT: Yes. Thank you very much, Mr. Chairman. Mr. Gillis does have a definite position on these documents. And his position is that what we have at issue here is a public utility. And since this is a public hearing he is definitely of the opinion that these documents should be disclosed to the public.

CHAIRMAN: Well, I don't think we need to huddle after that. The Board was able during the break to arrive at a conclusion.

First of all, I would like to emphasize that this panel views these documents in a different perspective from the way in which we viewed the AECL documentation.

We believe that with those contracts and agreements there was a broader public interest to be served in making those public so that the press and anyone else could review and understand exactly what was going on.

Here in the three documents I don't -- I'm a layman so I can't tell you. But I don't think they would be of any great interest to the public. But certainly to the

participants in this process they are.

So over the lunch time Board counsel is going to go back to the confidentiality file that we have built up as a result of these hearings.

And basically our order will be as follows, is that the documentation will be delivered in confidence to the formal intervenors in the process and to be restricted to the intervenors and not shared out with any members of the organization other than those who were involved in this process itself. And when the process is over they are to be returned to the applicant.

If we require cross-examination in reference to them then the Board -- we will go into an in-camera session. And the cross-examination will occur in that in-camera.

We believe that on that basis the proprietary interest that NB Power may have in the documents will be protected.

But also the participants in the hearing process will be able to scrutinize them and use them in this process. So we will get the details out on that at lunchtime. And when we reconvene, why we will be very particular on it.

Mr. Hashey, there is -- I understand you have a lot of copies of some -- of two of the documents. But the Ernst & Young report is pretty voluminous, is that correct?

MR. HASHEY: That is right. I have 10 of the Ernst & Young

report presently. I can make others. I can certainly make enough available to the formal intervenors. 10 would cover that I think.

If you could give me an indication of the numbers we will go to work at getting that done.

CHAIRMAN: Okay.

MR. HASHEY: Similarly we don't have at the moment the critical path document. But I will try to have that copied and available this afternoon, latest tomorrow morning.

CHAIRMAN: Yes.

MR. HASHEY: And the other document I have adequate copies with me this morning.

CHAIRMAN: Now I think one of things that we should do is that -- Mr. Coon is presently in his cross-examination. And I think if you have a copy of the documentation, then they should be shared with the Conservation Council sooner rather than later.

MR. HASHEY: I can give them to him right now.

CHAIRMAN: Yes. That is fine. But I mean, he has got to have an opportunity to review them as well.

MR. MACNUTT: Mr. Chairman, just for clarification, what is Mr. Hashey distributing now?

MR. HASHEY: I'm distributing now to Mr. Coon the Ernst &

Young report and the document which is the Point Lepreau Refurbishment, Completion of Codes and Standards Review that was discussed with Mr. White yesterday.

MR. MACNUTT: To assist in progressing with this, Mr. Chairman, it might be appropriate to canvass the formal intervenors to determine how many of them will wish copies of this document.

And it might assist Mr. Hashey in narrowing the number he has to produce.

MR. HASHEY: That would be very helpful.

CHAIRMAN: Okay. Why don't we do that then. AECL?

MR. MILLER: We would like copies (microphone not on) --

CHAIRMAN: And are the Canadian Unitarians for Social Justice and Saint John Citizens Coalition for Clean Air prepared to share a copy? Or do they want to have separates?

MR. DALZELL: Separate please. Could we ask one question, Mr. Chairman in respect to your comment about the decision you just made? Would it be appropriate to ask that question now to you as Chairman?

CHAIRMAN: Go ahead. You might as well.

MR. DALZELL: Could you just explain the responsibilities around the confidentiality aspect and the limitations of public interest groups like us if we are made party to

this information and explain the ramifications of receiving this information and restrictions upon us?

Because we are not --

CHAIRMAN: My intention, Mr. Dalzell, is to come back with a more particular ruling after Mr. MacNutt and I have been able to sit down with our file on confidentiality.

But pretty basically it goes to your hands in confidence. You are not allowed to pass it on or to copy it or do anything with it other than use it for the purposes of this hearing.

And if we get into cross-examination in reference to the contents thereof or implications thereof, we will go into an in-camera session when lawyers representing some clients and the client or intervenor here would be the only ones allowed in the room along with the witnesses, et cetera. So that we keep it so that informal intervenors do not get them. And therefore Hydro Quebec will not be involved.

But it is to be treated in confidence by yourselves. And that then protects the commercial value of those documents to NB Power.

MR. DALZELL: Yes. Thank you very much.

CHAIRMAN: But it will be very particular this afternoon.

MR. DALZELL: Thank you.

CHAIRMAN: Okay. The City, Mr. Campbell? He is not here.

Okay. And Mr. Coon, how many --

MR. COON: Yes. Well, we have copies already I guess.

CHAIRMAN: Yes. Is that a sufficient number for you? You know, is one shared with your group sufficient?

While you are asking, Mr. Campbell, does the City of Saint John wish to have a copy of these three documents that will be given to you in confidence?

MR. CAMPBELL: Yes, Mr. Chairman.

CHAIRMAN: All right. So that is one copy there. Mr. Coon?

MR. COON: The one is sufficient.

CHAIRMAN: Okay. Thank you. Mr. Craik is not here. But

I'm sure that he would want to have a copy. Energy Probe is not here and hasn't been here. Mr. Gillis would want a copy I'm sure. J. D. Irving?

MR. KENNY: We won't be needing a copy. Thank you.

CHAIRMAN: Okay. Thank you. Mr. LeBlanc is not here. But he probably will want a copy, Mr. Hashey. And the Province?

MR. HYSLOP: Probably require two copies if possible, Mr. Chairman.

CHAIRMAN: Okay. And Saint John Energy?

MR. YOUNG: Yes. One copy, Mr. Chairman.

CHAIRMAN: Okay. So that is 10. And you haven't got the

Board. And we probably should have a couple here at least. Okay.

Now are there any other preliminary matters? If not, I guess, Mr. Coon, you can continue your cross-examination of the panel.

MR. COON: Thank you, Mr. Chairman. I will just take a second here to sort of regroup. Okay. We are ready.

CROSS-EXAMINATION BY MR. COON:

Q. - Good morning, ladies and gentlemen. We left off yesterday at the end of the day on a line of cross around capacity factors of the refurbished Point Lepreau and I just wanted to pick up there.

If we could start off with exhibit A-16 in the slide deck, for this morning.

MR. MACNUTT: Do you have that reference again, Mr. Coon?

Q. - A-16 which is the slide deck from the presentation. And slide -- specifically slide 34.

Now this is the historic operating performance. It gives the original plant performance. It gives the operating performance from 1983 to 1994. And we -- we are just trying to come up with the operating performance from '95 to the present. And in interrogatories some of those numbers were provided, but the one year that is missing is 2002. I was wondering if you have that handy, the

capacity factor for 2002?

MR. WHITE: I believe it's 82.6

Q. - I can do the math. But if you know off the top of your head what the capacity factor was from '95 to the present that would expedite things. Have you got an answer for that?

MR. WHITE: No. I don't have it off the top of my head. I would have to make a shot at it.

Q. - Okay. If we go to exhibit A-1, which is the evidence -- Mr. Pilkington's evidence specifically on page 21. There is -- in table 2 there is a projection. Among other things, a projection for the remaining years in Point Lepreau's operating life of the capacity factor, which I would make out over those four years as being projecting forward 73.8 percent capacity factor. Would that be fair, Mr. Pilkington, for that?

MR. PILKINGTON: I haven't actually done that calculation, but it sounds to be in the ball park.

Q. - Ball park. Now when you calculate lifetime capacity factors, how do you deal with -- with the question of lifespan? In other words, in the -- in the case of Point Lepreau, when its engineer lifespan was projected to be 30 years and when you refer to its -- ultimately when you refer to its lifetime capacity factor, will you consider

its lifetime capacity factor over those 30 years, or will you consider its lifetime capacity factor as being its performance over the truncated number of years that it actually operated?

MR. PILKINGTON: We calculate the lifetime capacity factor each year adding to the previous years. And so it would be truncated at whatever the last year of operation was.

Q. - So when the operating -- projected operating life was truncated that doesn't influence your calculation of capacity, lifetime capacity factors?

MR. WHITE: Excuse me. Lifetime capacity factor as defined in the nuclear industry starts from the day the reactor first generated its first kilowatt, and it goes forward until current time.

Q. - Thank you. That clarifies that. You have said that -- yesterday it was said that the biggest factor in the reduced performance of Lepreau since 1995 was the problem with the garter springs in the fuel assemblies. Is that correct?

MR. PILKINGTON: That is correct.

Q. - And that in the proposal to reconstruct the reactor these new tight fitting spacers which would replace those, would solve that problem. Is that correct?

MR. PILKINGTON: Yes, that is also correct.

Q. - So these new tight fitting spacers would be the key, in your opinion, to achieving the high level of performance you are projecting for a reconstructed Point Lepreau?

MR. PILKINGTON: That would be a very important factor. The performance of the fuel channels and feeders would be an important element in the high performance of Lepreau in the future.

As I said yesterday, there is another very important element. And that is the improvement programs that are broader than simply fuel channels, which are currently in progress. And those again, looking at human performance, equipment performance more broadly than just the fuel channels and at effectiveness of work processes.

Q. - Thank you. Now could we move to exhibit A-5, please, that's the interrogatories. And it would be CCNB-1. And in this interrogatory which was a response from Mr. White, I guess, CCNB-1, there is a listing of the capacity factor since 1995. And adding -- just one second, please.

We have capacity factors for the various years since 1995. I'm wondering if Mr. White or Mr. Pilkington could -- in 2000 and 2001 there was a 65 percent capacity factor. Was there a significantly reduced performance there resulting from a problem with the garter springs in that year?

MR. PILKINGTON: I believe that there was a forced shutdown in that year as a result of a leak in a feeder.

Q. - And in 1999 and 2000 you had a significantly reduced capacity factor there. Could you explain was that a garter spring problem in that case?

MR. PILKINGTON: Yes, there was a significant amount of time spent in the SLARETTE process which is relocating garter springs.

Q. - Thank you. And in 1970 -- '97 and '98 where you had a 66 percent capacity factor, was that garter spring problems?

MR. PILKINGTON: Actually I'm not immediately certain in '97 and '98. Mr. Coon, I believe there are -- is other material in the evidence submitted that might be helpful, and if I could just take a moment to look for that?

Q. - Certainly.

MR. PILKINGTON: Excuse me, Mr. Coon, could you bring me back to the document we started working from?

MR. COON: Yes, certainly. I have a problem too. A-5 --

MR. PILKINGTON: Thank you.

MR. COON: -- on CCNB-1.

MR. MACNUTT: Perhaps, Mr. Chairman, to assist, A-5, PNB-2 may be of assistance. PNB, A-5 PNB-2.

MR. PILKINGTON: Mr. Coon --

MR. COON: Yes.

MR. PILKINGTON: Yes. I think between a number of references here, I can speak a little bit to '97, '98.

Looking at PNB-2 in A-5 -- sorry -- A-5 PNB-2, we had planned 59 days of outage and that was intended to include an inspection of a number of fuel channels and relocation of spacers in a number of fuel channels. So in fact fuel channel maintenance was a component of that outage.

In that year we also had a 31 day unplanned outage as a result of a dual lightening strike on the lines leading into the plant.

Q. - That's fine then, Mr. Pilkington. Then we can move back to '96/'97, and I guess we can operate off PNB-2 here. This is a much better table anyway, quite instructive. In the case of '96/'97 we would also like you to explain the reason here for the low performance. It says boiler repairs and fuel channel replacement. Does any of this have to do with readjusting the garter springs?

MR. PILKINGTON: No, but the fuel channel replacement is of course directly related to fuel channel maintenance and fuel channel life.

Q. - And if we go back to '95/'96, this dramatic drop in performance, was that related to a problem with the garter spring?

MR. PILKINGTON: Very much so. Most of that time was to

complete -- just a moment -- '95/'96 -- yes, the majority of that time was in fact repositioning of spacers.

Q. - Now in PNB-2 here it says the budgeted outage was 186 days, the actual outage was 254 days (wood cover event). Was this wood cover event, which I will ask you to explain, the reason that it went from 186 to 254?

MR. PILKINGTON: That is correct.

Q. - Could you explain the wood cover event, please?

MR. PILKINGTON: Yes. At the end of the outage which was primarily for spacer relocation, a protective wooden cover was left in the nozzle of one of the boilers or steam generators and during that plant start-up that wood cover entered the primary cooling system and the debris had to be removed and one of the primary coolant pumps repaired.

Q. - So would that fall in the category of outage as a result of human error?

MR. PILKINGTON: Yes, it would.

Q. - So then it's fair to say that the annual capacity factor for that -- from '95 to the present, first of all which we just calculated the numbers here as 65.6 percent '95 to the present, is that ball park reasonable, do you suppose?

MR. PILKINGTON: Just a moment. We got 69.3. What was yours?

Q. - 65.6. But anyway --

MR. PILKINGTON: We are in the ball park.

Q. - We are in the ball park. So somewhere in the late -- in the higher 60's. Over that five year period would it not be fair to say, Mr. Pilkington, that the reduced performance down below 70 percent since 1995 to the present is really a mix of the issue you identify as being key which was the problems with these spacers or garter rings that was supposed to be addressed in the refurbishment project, and a combination of other factors, human error, lightening strikes, feeder problems and fuel channel problems? Would that be fair to say?

MR. PILKINGTON: That would be fair to say, yes.

Q. - And this fuel channel problem in 1996/1997, was that in any way connected to the wood cover event in the previous year?

MR. PILKINGTON: No, it was not connected to the wood cover event.

Q. - Thank you. So we have got somewhere between 65 and 69 percent capacity factor from 1995 to the present. Going back to -- well we already established this, I guess. About 73.8 percent you are projecting out forward to the end of the reactor life, we talked about that a little while ago. So 73.8 percent from the present out to 2006 is what you are projecting?

MR. PILKINGTON: I believe that was your number --

Q. - Yes, it was.

MR. PILKINGTON: -- and we simply again agreed it's in the ball park.

Q. - Roughly, yes, ball park. So I guess my question to you is with respect to the projection of an 89 percent life time capacity factor for a refurbished Point Lepreau, given that as we have seen in the last five years actually a real combination of things that led to dramatic reductions in Point Lepreau's performance, not just the problem with the spacers which you said will be rectified, but a whole variety of other things that could happen again, human error, lightening strikes, those kinds of things, wouldn't you agree?

MR. PILKINGTON: Could you just repeat that so I can get the context?

Q. - Well the point is that it wasn't simply or even the majority of the loss of performance since 1995 at Point Lepreau cannot be attributed to the garter spring problem?

MR. PILKINGTON: I believe the majority of the loss of performance can be attributed to the garter spring problem.

Q. - We will do the math and get back to you on that. But you will agree that there were other factors contributing to

the significant declines in performance, as you have articulated on a year by year basis here?

MR. PILKINGTON: That is correct.

Q. - And those other factors, human error, lightening strikes, are not things that can be prevented through some technical fix in a refurbished Point Lepreau?

MR. PILKINGTON: That is correct.

Q. - Thank you. I would like to turn now to the plant performance agreement, A-17. Okay. On the plant performance agreement, page 15, 7.3 -- or just me just get there. 7.3.4 (b). This is the section dealing with the liquidated damages. Now here in this paragraph (b) it suggests that liquidated damages in any single warranty period shall be limited to a maximum of \$24,940,000 in any warranty period of 12 months duration.

Can you explain exactly what that covers, Mr. White?

MR. WHITE: We have started the base for warranty at 80 percent capacity factor. And when the 80 -- when the capacity factor is below 80 percent, we will pay \$15 per megawatt hour below that. And that's equivalent to about I think it's 8.6 -- \$860,000 a day. And if you look at dropping that to 50 percent capacity factor, that computes to \$24.9 million.

Q. - And that's -- that 24.9 million is the cap for a 12 month

period, is that correct?

MR. WHITE: That's correct.

Q. - What would that translate into in terms of days of replacement power costs?

MR. WHITE: Well if you use the numbers that we used earlier of \$500,000 a day then that computes to about 50 days.

Q. - So this warranty would cover in effect a maximum on an annual basis of 50 days of outage for the replacement power costs?

MR. WHITE: Approximately.

Q. - Approximately. But if we think of it in those terms, it wouldn't cover other costs incurred as a result of outages?

MR. WHITE: If you think of it purely in those terms, then that eats up the dollars and it doesn't leave any for the maintenance work that might be necessary as a result of the outage.

Q. - Thank you. Now if we move down to (c), paragraph (c) here. It says, liquidated damages for the term of this agreement shall be subject to a maximum aggregate liability for liquidated damages of \$225 million.

Now, Mr. White, I understand this as the sort of universal cap for the life of a reconstructed Point Lepreau to be a maximum of 225 million that AECL would pay

out as a result of performance dropping below 80 percent.

Is that correct?

MR. WHITE: That's correct.

Q. - And this would cover the full 25 years you are projecting forward for the life span of the plant? The term of the agreement will cover the 25 years of the life span of the plant, is that what it would do?

MR. WHITE: The plant performance agreement covers the 25 years or it covers until the maximum generation that has been specified is reached.

Q. - Correct. So it would run out if the maximum generation specified occurred prior to the 25 year -- calendar years?

MR. WHITE: That's correct.

Q. - Okay. Now this \$225 million over 25 calendar years, by my calculation would represent -- in the fuel cost replacement power cost numbers we are using covers for 18 days per year spread over 25 years. Is that in the ballpark, would you agree? So if you average it over 25 years this would cover the replacement power costs essentially for 18 days of outages per year?

MR. WHITE: I haven't done that calculation, but you may be right.

Q. - But of course this is also limited in how it's paid out by the annual cap? So if you have a particular bad year

then you run into your cap?

MR. WHITE: That's correct.

Q. - Thank you. Now if we can turn back a few pages in the same document to page 11, article 6. Now this is a description here of something called an executive governance committee. And in 6.2 it says, The mandate of the executive governance committee is to make policy decisions and provide strategic direction to NB Power on technical aspects of refurbishment operation, maintenance and improvement of Point Lepreau. And it goes on.

In 6.3.1 at the bottom of the page it tells us that the executive governance committee will be made up of three representatives of each NB Power and AECL. Am I correctly understanding the mandate and membership of this executive governance committee?

MR. WHITE: Yes, you are, sir.

Q. - My question then, Mr. White, is why would NB Power agree to having AECL members on a governance committee for the operation of the power plant involved in making policy decisions regarding technical matters during operation that could have an impact on financial risks facing the taxpayers or ratepayers?

MR. WHITE: In my presentation under the slide presentation, I referenced that we had four contracts here. And you are

referring to one of them, the plant performance agreement and the other is an ongoing technical service agreement, a cost agreement.

And in terms of mitigating the risk on an ongoing basis for the operation of Point Lepreau with the changing environment of deregulation and consolidation in the industry and diversification and assets moving around, we felt that to mitigate that risk properly we should have technical support for the ongoing operation of the station over its remaining life and that our designer of the nuclear steam supply plant, AECL was an appropriate choice for that. And that in order to be able to bring their expertise to bear that we should in fact acquire technical resources from them, and we should acquire managerial support.

And so this executive committee that is here, executive governance committee accesses that managerial and technical support into a committee that looks at the overview of operation of the station to ensure that the operational and technical issues relative to the station are being continuously handled in a good manner and to the best value of adding high capacity factor to the station.

And so this committee has an oversight role in making policy and strategic recommendations and decisions to the

operation of the station, to ensure its highest capacity factor.

It can be overruled by NB Power executive. And if it's overruled by NB Power executive for the corporation's own financial and well being considerations, then it displaces the plant performance agreement in that. So this is structured so that we get the highest level of technical and current managerial knowledge into running the plant well.

Q. - Mr. White, would you agree that this is more than management support, as I read this, and AECL is being invited into the governance circle for making decisions around policy and strategic direction on refurbishment and operation maintenance of the Point Lepreau Nuclear Power Plant?

MR. WHITE: Well if you look today at the arrangement that we have having gone through Phase 1 and moving to Phase 2 with involving our designer in both the condition assessments and the scope of work, part of them warranting the ongoing operation of the plant is based on them understanding the current conditions so that they can have confidence that when they put their money on the line that they believe the plant will run at high capacity factors.

In doing that we have an executive steering committee

that's part of all aspects of these four contracts. And it includes high level people from New Brunswick Power, including myself, the President and a number of our other VP's. It also includes the President and VP of AECL as well as a number of their people, so that we are engaging the high level executive of both corporations in ensuring that this arrangement provides a maximum value to us and provides value to -- maximum value to AECL. So we have got mutual benefits that meet each other's needs.

Q. - In the past, decisions concerning policy around the operation of Point Lepreau and up until this agreement, its refurbishment, were they not the mandate of NB Power exclusively?

MR. WHITE: NB Power maintains the sole right to make all executive decisions now and in the future.

Q. - Can you point in this contract to me where it clarifies the ability of NB Power to overrule the decisions -- the recommendations of these -- decisions of this executive governance committee? Although I would add, I can't imagine if you have got the CEO's of both companies sitting on the governance committee that NB Power is going to overrule what they decide, but for the purposes of this contract we would like to see where it specifies that.

MR. WHITE: There is two pieces in here. I haven't found

the second one yet, but the first one is under 4.4. It says, it is the sole responsibility of NB Power to obtain all -- excuse me -- 4.3 on page 10. Subject to and without limitation to 4.1 above, NB Power shall be the sole operator of Point Lepreau and have the right to make any and all decisions relating to Lepreau including its refurbishment, operations, maintenance, improvement and shut-down, all of the same being done at the sole expense of New Brunswick Power.

There is also a reference in page 12 under 6.3, item 3, it talks about voting of the committee. There is three representatives on the committee, three from AECL and three from NB Power, and the chairman shall be entitled to cast the deciding vote. The chairman actually ends up with two votes.

Q. - And can you clarify again from what organization the chairman would come?

MR. WHITE: NB Power.

Q. - So in the event that there is a split, the chairman can cast the deciding vote on this committee?

MR. WHITE: Yes.

Q. - Okay. Thank you very much. I will leave this for the lawyers later on, I think. Now -- thank you, Mr. White.

I would just like to go back to Mr. Pilkington. We

have been squirrelling away here for those low capacity years subsequent to 1995 and the outages from PNB-9. And I guess I'm just asking you if you would come back to -- with your numbers -- our numbers are -- there were 271 days in the years that we were questioning on 271 days worth of outage related to adjusting garter springs and SLAR and related work connected to the problems with the garter springs, and 854 days worth of outages related to other things, which would not represent -- if that were the case, you would agree, Mr. Pilkington, our math may be wrong here, but that would not represent garter springs being the majority -- garter springs representing the majority of the problems with low performance?

MR. PILKINGTON: I would have to go away and work out my own set of numbers before I could comment on that.

Q. - Yes. If you could provide those after lunch or -- I don't know -- probably if we have our break before lunch or after lunch, that would be appreciated, just so we can get this clarified, because as I'm sure you will agree it is important to sort out what the major factors were in significantly reduced performance at Point Lepreau in terms of trying to determine whether or not we can get the 89 percent capacity factor in a reconstructed Point Lepreau. Thank you.

MR. WHITE: Just a point of clarification on your previous question to me, also in article 6.2 on page 11 it says that the decisions and directions of the executive governance committee within the mandate shall be binding on NB Power save and except for the senior executive of NB Power having conferred with the executive governance committee overrules its decision based on the rights NB Power has under article 4.

MR. COON: Thank you, Mr. White. I appreciate that. Now I'm going to turn the mike over to Mr. Secord who has a series of questions around benefit cost analysis.

CROSS-EXAMINATION BY MR. SECORD:

Q. - My questions have to do with clarifying the relationship between benefit cost analysis and specific investments in safety related improvements.

I would like to go to exhibit A-1 to the appendix A-1 in that exhibit which is the nuclear regulator letter, and three pages into that appendix there is an attachment, and within the attachment I would like to direct you to section 6.3.2. Section 6.3.2 is titled "Agreement on Cost Benefit Analysis BCA process".

It's my understanding that NB Power requested that a benefit cost analysis process be used to assist in the resolution of what they call complex safety and licensing

issues that might arise in the future. My understanding of the response of the Canadian Nuclear Safety Commission was that it's their policy to consider cost benefit information and that they view it as a comparison tool to contribute to making decisions with respect to alternatives. They pointed out that it will not be accepted as a means for changing the licencing basis. And then they take the example of the question of the relocation of the secondary side piping and they conclude that the analysis suggests that the current location of the piping is acceptable based on the benefit cost analysis evaluation. And then they point out that unless new information warrants they would be unlikely to raise this issue with the commission.

Is this a fair summary of the Canadian Nuclear Safety Commission's response, the staff response, to NB Power's request regarding the use of the benefit cost analysis process?

MR. WHITE: I think it states their position on it.

Q. - The response seems to imply, and you can correct me if I am wrong, that it's NB Power's intent to use benefit cost analysis on an ongoing basis going into the future as one of the criteria they would use when evaluating whether or not to make incremental safety improvements at the

reactor, is that correct?

MR. WHITE: It's a tool that we concur with the regulator is useful in making these decisions. Benefit cost analysis is a federal policy and CNSC being a federal regulator is therefore subject to it in a number of its activities. The federal regulator is also moving in the direction of risk based regulation and there needs to be some method that he has used to evaluate risk and cost benefit is one of those tools -- a benefit cost analysis is one of those tools.

Q. - So you would agree that this tool would be used on an ongoing basis as part of the process to evaluate incremental investments which might improve the safety of the reactor?

MR. WHITE: It's a useful tool for our attempting to do that. It's not the sole one, but it's a useful tool.

Q. - Now I would direct your attention to A-10, which is a response to the interrogatory of the Public Utilities Board interrogatory number 24. And A-10 relates to benefit cost analysis. And there is several documents provided. One with respect to the principles and process. Another with respect to implementation guidelines. Another with respect to the basis for recommended inputs for benefit cost analysis. And another which is the

benefit cost analysis workbook users manual.

Now my intent here is not to go through every page, but rather to get a general understanding of what is involved in this technique.

And perhaps you could correct me if I'm wrong. But my general understanding in looking at the evidence is this is a technique that identifies the problem. Identifies various alternatives and then for each alternative attempts to estimate the costs and benefits and that involves assigning -- assigning a monetary value to each of the costs and benefits. And comparing the net benefit from each alternative to choose the most desirable alternative.

Am I -- is that a fair approximation?

MR. WHITE: I think that's a fair approximation. That's what it's attempting to do.

Q. - Now again without getting into the details, I would like to generally have your assistance in drawing out of these documents the particular -- what types of costs and benefits would be factored into this analysis.

For example, on the cost side presumably we are talking about monetary expenditures for safety improvements in the facility. Is that correct?

MR. WHITE: I will let Mr. Groom handle the details here.

MR. GROOM: Yes. The context of this tool as it was used on this project was to look at those -- those potential issues and concerns that had been raised by the regulator. Bearing in mind that we were, and continue to be, in full compliance with all of the regulatory requirements.

So look at the possibility of injecting future improved margins or improved safety features into -- into Point Lepreau as a part of refurbishment. And so we have undertaken to develop a tool and a process where we could look at the individual recommendations and go through our -- set up a process whereby we could rank them for their -- their relative benefit based on their cost and their contribution to improving safety.

So it was used as a tool to look at some explicit recommendations that had come up following dialogue with the regulator, the nuclear regulator on some areas for potential opportunities for improvements.

Q. - And am I correct in inferring that that dialogue with the regulator is an ongoing dialogue. And going forward into the future the regulator might suggest other possible investments for safety improvements which you would take a look at?

MR. GROOM: That's correct. As Mr. White had pointed out the -- and as it says in the -- in the basis document,

it's a part of the Government of Canada's regulatory requirements that the regulator begin to use such tools. So there has been an industry task group working with the nuclear regulator to try and set up the process.

In this case we had recommended these four documents which you referred to as a -- as a possible procedure for them to consider using.

Q. - Now in this approach I want to talk for a moment about what is included in on the cost side.

I am assuming here that things like equipment purchases, labour time, as well as additional operation and maintenance costs associated with particular safety improvements, would be included normally?

MR. GROOM: Yes. We would generally try to include the lifetime cost estimates for the particular issue that's being addressed. So it would, as you described, include such things as the cost for construction, procurement, commissioning, operation, maintenance, testing and if warranted, any costs related to disassembly. And we try to identify the life time costs.

Q. - So this might also include, for example, replacement fuel costs if there is down time involved in the improvements?

MR. GROOM: You would have to look at the specific example.

Sometimes that might be irrelevant. I don't believe that

in any of the examples we applied this to that particular issue was raised.

Q. - I assume that you would try to do these improvements when you were down for a scheduled maintenance --

MR. GROOM: Would you please repeat the question?

Q. - Am I correct in assuming -- assuming that you would ordinarily try to make these improvements at times when the reactor is down for planned maintenance?

MR. GROOM: In this particular -- let me -- let me repeat again. In this particular application we have had dialogue with the regulator about some specific issues which had been proposed as potential safety improvements that could be included in the refurbishment scope. So we propose this tool for those explicit examples to go through and provide a -- an assistance to them as well as ourselves in -- in prioritizing and ranking which of these would be included in the scope.

It was on the basis of the licencing framework document that we identified those items which would be contained in the scope, and then provided this as a tool to demonstrate the basis for those -- those inclusions.

Q. - Right. So for safety -- for investments in safety improvements carried out at the same time that the plant is being refurbished, one can then assume that there would

be no replacement fuel costs assigned to the investments in safety improvements. Is that correct?

MR. WHITE: I think that's a fair statement.

Q. - Thank you. When looking at the cost, is it fair to say that for certain safety improvements there may be implications for the rating or the capacity factor of the unit?

MR. WHITE: No, I don't think so.

MR. GROOM: Well for the -- for the -- just let me put another point of clarification just before I respond to your answer, if you would bear with me.

As we have gone through this process in Phase 1, obviously we have not applied the full process to all of the issues that -- that might be coming in the future. So we really -- we were trying to use it both from the perspective of those items which we put into the scope, as well as putting it on the table as a tool for future application.

So the regulator is, as I mentioned earlier with our -- considering this, a joint task team with our industry partners as a tool to use.

In terms of the specific question, again, would you repeat it for me, if you would?

Q. - I just was asking if there might be instances where a

safety improvement involved -- had an impact on the future capacity factor?

MR. WHITE: In this case we are looking at safety margins. Not the safe operation of the station. That has already been concluded as part of the operating licence that we have safe operation of the station.

And so what we are doing is looking into the future here and looking at areas where we might add to that safety margin. And is there a benefit in investing to add to that safety margin. And some way to attempt to quantify and evaluate those kinds of things.

This isn't dealing with uprating of the plant or downrating of the plant or those things.

Q. - Okay. Now I would like to turn to a discussion of how the benefits of safety improvements are conceptualized generally, and how they are assigned monetary values.

And I would direct your attention to one of the documents, which I shall find in one moment.

Yes. If I could direct your attention to the third document in A-10 which we have been looking at, that is -- it's called --

MR. GROOM: Is this the one called "Basis for Recommended Inputs for BCA"?

Q. - That's correct.

MR. DUMONT: I got it.

Q. - Within that document there is a section 3 which is titled "BCA Generic Inputs"?

MR. GROOM: Yes. That is on page 3.1?

Q. - Page 3.1, yes.

MR. GROOM: Yes.

Q. - Now this table 3.1 which is called BCA Generic Input, various input parameter, the value and a unit value. There is a figure in table 3.1 of \$5 million Canadian for the dollar equivalent of averted fatalities.

I was wondering if the panel could explain the way in which that number is utilized in the benefit cost analysis?

MR. GROOM: The -- in each of the postulated events for which this process may be applied, there is a process where risk evaluation is done and a judgment made in terms of the consequence. So in the case of the example that was used in the letter to the regulator, as an example, one of the questions asked is in the improbable event of a rupture of a main steam line and the energy release, what are the possible consequences.

And among the consequences that are looked at are including -- do include such things as possible fatality.

So a risk consequence -- probability consequence

assessment is done to assign a risk value for that.

In addition then for that, in order to be able to put a cost on it, we assign a value for the potential consequence of the fatality. And that is the value that has been recommended to use. And it comes I think from the reference that is assigned there in reference 3.

Q. - So just to put this in plain language, and there may be no simpler way of putting this, in your benefit cost analysis the value of the human life is then \$5 million?

MR. GROOM: Those are your words.

Q. - Do you have words?

MR. GROOM: Thank you for interpreting.

Q. - Could you put your words to that -- meaning of that number?

MR. GROOM: No. What we do is -- these are the dollars that we should expend to avert a fatality.

Q. - Now you used the example of a pipe break resulting in a fatality. The --

MR. GROOM: No. I didn't say that. I said that there was an unlikely possibility.

Q. - Let me just see if my understanding is clear on the methodology that is being used. The benefits of safety investments are being estimated based on expected values essentially. The estimates of the expected values of the

increase in life expectancy of workers, general public,
that is the general idea here?

So you are multiplying a probability of various events
by the monetary value of the outcome for each of those
events?

MR. GROOM: That's correct.

Q. - Now could you explain the second line as a dollar
equivalent of averted public dose \$400,000 PSV?

MR. GROOM: That's per sievert.

Q. - So that presumably relates to a particular dose of
radiation?

MR. GROOM: I'm sorry, would you repeat the question?

Q. - Am I correct in inferring that the unit value there
relates to a particular dose of radiation?

MR. GROOM: That's affirmative. My learned colleague has
just corrected me that the absolute value is a pico --
sievert, not a sievert, so --

Q. - Right. Now could you --

MR. GROOM: Excuse me, not pico -- person sieverts. Thank
you.

Q. - There is another number, dollar equivalent of averted
worker dose which is \$1 million, whereas the dollar
equivalent of averted public dose is \$400,000.

Could you explain why a different value is chosen for

those two different individuals who might be exposed to the same amount of radiation?

MR. GROOM: No. I will have to take that under advisement. I can't answer that.

MR. WHITE: Just to give you a general overview, not that I know the specifics of the answer to your question, but in public dose, the public dose numbers are very, very, very small, okay. The worker allowable doses are higher than that. And so there is more potential for the worker to get dose than there is for the public to get dose. And therefore nominally you would assign a higher value for that.

Q. - So are you suggesting that in the public dose calculation there is an assumption that radioactive releases associated with accidents don't reach the public or that the public responds differently?

MR. WHITE: What I'm indicating is that the worker inside the facility has higher potential for exposure than does the average member of the public, okay. And therefore because his frequency of potential for exposure is higher, then I believe these numbers represent a recognition of that.

MR. SOLLOWS: If I might, just to clarify here, it was my understanding, and again I don't claim any particular

expertise with benefit cost analysis, but that would be covered by the probability that we are going to multiply by the cost.

So isn't the cost separate from the dollar amount? Isn't the dollar amount one thing? And then the probability of exposure being higher, then when we multiply it by the dollar amount we get the risk? So don't they have to be somewhat independent?

I'm thinking maybe it would be most productive if we do carry on and check the original documentation and come back with it.

MR. GROOM: Okay.

MR. HASHEY: Mr. Chairman, aren't we sort of leading into the generic area here? These things I believe are more related to the nuclear regulator than maybe the Public Utilities Board?

CHAIRMAN: I don't know where they are leading, Mr. Hashey.

MR. HASHEY: No.

CHAIRMAN: I -- however, we are dealing with the methodology of looking at costs. And that certainly is the jurisdiction of this Board.

MR. HASHEY: Could I have a couple of minutes with --

CHAIRMAN: Yes.

MR. HASHEY: -- Mr. Little? Because I don't really think

that is the case.

Sorry, Mr. Chairman. Thank you. I think we have got to go back to the generic hearing transcript. But I do believe that these are social issues that have to be dealt with and are valued within the other and was ruled that they wouldn't be part of this hearing. But we can check that and maybe we can take our position on that post-lunch.

CHAIRMAN: Well, what I am going to suggest is that we rise now for lunch and come back at 1:30. And Mr. Hashey you will get it. At that time I would probably ask Conservation Council to tell me where you are going and where you hope to get. Anyway we will take our lunch.

(Recess - 12:10 p.m. - 1:15 p.m.)

CHAIRMAN: Mr. MacNutt, did I give you the copies of the NEB procedure?

MR. MACNUTT: No. I think you took them in and may have put them on your table, Mr. Chairman.

CHAIRMAN: Would you like to get -- get them for me, since you have got a key? Thank you. Senility is getting worse.

While Mr. MacNutt has gone to do that for me, any other preliminary matters? Mr. Coon?

MR. COON: Yes, Mr. Chairman, over lunch I was just looking

at the documents that were provided. And I just wanted to make a comment on both of them with respect to the ruling or order you are about to give, and it may influence your thinking on this.

In the first instance, The Summary of Deviation Codes and Standards, there is a cover letter on the document. And this is a letter from Paul Thompson from Point -- from the licencing manager in charge of Point Lepreau refurbishment, to Mr. Detorakis at the Canadian Nuclear Safety Commission describing what this attachment is. And it is circulated to a number of people, including R. Pageau and A. Joyal of HQ and R. Moya and K. Dinnie of OPG. And I was wondering if it would be possible for the panel to confirm that in fact R. Pageau and A. Joyal work for Hydro Quebec?

And if that's the case, then I would ask that your order not -- this be withdrawn from the order and not applied to this particular document. So that's my first point.

CHAIRMAN: Anybody on the panel --

MR. GROOM: Yes, I can confirm they work for Hydro Quebec.

And I would point out that in our arrangements with Hydro Quebec, when any document becomes part of the public -- release with public availability, then that puts it in a

position where we are not able to recover costs from them.

Because the process that we have in place really precludes us either charging one another for those things that are normally available for free.

MR. COON: My assumption in raising this was since this has been already circulated to Hydro Quebec, that they have dealt with their financial arrangements and that's no longer an issue. They are not going to get the information. They have already got the information, so the fact that we get it now should make no material difference to Hydro Quebec or NB Power since Hydro Quebec has the information in their possession.

CHAIRMAN: That's not what the witness is indicating, Mr. Coon. It's a weird agreement, but there you have it.

MR. COON: Well, can I -- can I ask the witness then, Mr. Chairman?

CHAIRMAN: Certainly, go ahead.

MR. COON: Whether Hydro Quebec has agreed to pay you for this document already?

MR. GROOM: Would you repeat the question, please?

MR. COON: Has Hydro Quebec agreed to pay you for this document?

MR. GROOM: The safety and licencing document set which includes this are among those that they have agreed to pay

us for.

MR. COON: Okay. So what is the problem, they have agreed to pay you for it?

MR. GROOM: Well we won't -- we won't be able to collect payment obviously if it becomes a document that they can receive for free in the public forum.

MR. COON: But you have already given it to them. They have already got it?

MR. GROOM: You asked -- you asked me if they had agreed to pay for it, and they have -- we have contractually agreed to pay for it. They haven't paid us yet.

MR. WHITE: I think the point that is being made here is that we maintain the rights to that information unless Hydro Quebec have actually purchased it. So they can't take it and use it.

If they receive it in the public forum, then they can legitimately claim that they got it from the public forum and therefore it's -- it's not proprietary to us.

MR. COON: So what you -- what you are saying is that Hydro Quebec won't honour their agreement with you to pay up for this document if it's something that some time after they have received it, could be obtained free?

MR. WHITE: Most of these arrangements are on the basis that this is proprietary information that belongs to one party.

And if that information is available in the public forum, then they can use what is from that source. But they can't use it because they just happen to have it because we sent it to them with a copy of our letter. They have no rights to use that. And that's the same thing with us.

We have no rights to use their stuff, but we may be aware of it because we may have been copied on.

But they maintain their confidential priority -- or their -- their property rights on it.

MR. COON: Have any of the other recipients of this -- this document from OPG, which is Ontario Power Generation, I understand, AECL or BP, which is, I'm not sure, Mr. White.

But have they signed any documents that suggest that they will not circulate this to other bodies?

MR. WHITE: BP would be Bruce Power.

MR. COON: Thank you.

MR. WHITE: Okay. And we have technical exchange agreements with OP -- or Hydro Quebec. We also have technical exchange agreements with Ontario Power. Okay. And I don't know if we signed one with Bruce Power or not.

MR. COON: The question then is did Bruce Power, OPG or AECL get this for free?

MR. WHITE: They have the information. They don't have the rights to use it.

MR. COON: But they are not going to pay you for it?

MR. WHITE: If they want to use the information, which is what Mr. Stu Groom is reporting, then they are prepared to enter into a payment agreement with us. And that was the subject of the negotiations.

MR. COON: Let me get this clear. They have the information. They have the document. So how do you define use? Like they are not allowed to read it. They can't read it unless they pay you for it, or they can't do what with it?

MR. WHITE: Can't use it as part of their work of assessment of their refurbishment process.

So they couldn't, as an example, present it to the regulator as their information.

MR. COON: Well, I don't think any of the intervenors are going to use this document for any such process either.

It just strikes me, Mr. Chairman, odd that this is essentially in wide circulation to, well, two public utilities, AECL a crown corporation and a private company, Bruce -- Bruce Power, and we are going to have to deal with confidentiality agreements here, or a confidentiality order on this. It just doesn't seem to add up.

CHAIRMAN: Well, I am not going to get into micro-managing NB Power. But I would think that your legal counsel would

be able to come up with agreements that would allow matters to be put on the public record in front of your regulator that would still be subject to that particular agreement you are talking about in some way, shape or form. However, that's neither here nor there.

We are faced, Mr. Coon, with what we are faced with. And I don't -- so the Board is not prepared to change its ruling.

MR. COON: One further matter, Mr. Chairman, if I may.

CHAIRMAN: Yes.

MR. COON: On the second document the risk assessment report that -- that was handed us before lunch in that in two tabs, 10 and 11 there is information that -- that we believe should have been released as part of CCNB interrogatory responses and it was obviously inadvertently left out or overlooked. These are parts of --

CHAIRMAN: Mr. Coon, I am going to stop you right there.

And I suggest you approach NB Power's solicitor during the break -- and we will give you that right now if you want to, and talk about that.

But the Board's ruling is that when we discuss the documentation, et cetera, that we go into a closed session. We go into a confidential session. So I'm just anticipating that's where you are going to get.

MR. COON: These are additions to the Ernst & Young document, not part of the Ernst & Young document.

CHAIRMAN: I would feel more comfortable, Mr. Coon, if, you know, why don't -- the Board will simply give you a moment or two right now to talk to Mr. Hashey about it. And he can check with the witnesses or whatever. Okay. Go ahead.

MR. HASHEY: The two documents that have been referred to by Mr. Coon or the attachments were documents that were provided to a management team, not to the Board. I don't think we are not accurate in providing all information that was requested.

This is not a Board document. These two were not presentations to the Board per se. This was to management.

CHAIRMAN: This was what?

MR. HASHEY: To management team.

CHAIRMAN: Okay. I'm not privy to the argument that Mr. Coon was making here --

MR. HASHEY: I'm sorry.

CHAIRMAN: -- Mr. Hashey.

I just -- all I heard -- well, you heard what I heard, which was that there wasn't a fullsome response to some interrogatories, since certain of that information wasn't

provided.

Is that fair paraphrasing, Mr. Coon?

MR. COON: I guess the bottom line here is we are asking that these two presentations attached to this Ernst & Young study to NB Power management team be excluded from your order, as they are not part of the Ernst & Young study and don't fall under the concerns that the panel has raised around confidentiality for the Ernst & Young study.

MR. HASHEY: They are part of the document.

CHAIRMAN: The Board has not received its copies yet at all.

I'm trying to think. Maybe what we could do -- I'm sure your cross-examination is going to continue on for the better part of this afternoon, Mr. Coon?

MR. COON: We have some further cross, yes.

CHAIRMAN: Yes. Would it inconvenience if we suggested that we wait until the break that we have this afternoon, so that Mr. Hashey can go through that, find out what is going on?

MR. COON: That is fine.

CHAIRMAN: Okay. All right. And once he has been able to do that, I will call on the other intervenors as well to have an input, if we continue to have a difficulty with it.

Okay. Back to what we are doing, that is the Board is

doing, I have got in front of me an appendix D on confidential hearing procedure which I believe Mr. Miller provided at sometime in the past, prior to our hearing on the AECL documents.

And it appears to me that it is an NEB procedure. And pretty much -- I have gone over it with Board counsel, Mr. MacNutt. To me it appears to be a pretty appropriate way to proceed.

I'm going to hand it out to counsel or to the parties here. And if you would take an opportunity as well during the break this afternoon to look at it, then you can give me some comments on it, if you think it is appropriate in these circumstances.

I guess the Board's thrust is simply that these documents will be given to the parties here or legal advisers and any consultants that might be here as well, to be kept for the purposes only of the cross-examination in reference to this hearing. And when the hearing is concluded then the documents will be returned to NB Power or destroyed in some fashion.

And they are to remain confidential at all times and not distributed to let's say your Board of Directors or anybody else, just the people who are here for use in this hearing process.

So I will -- these will be available at the break time. You can take a look at them and make any comments that you want to make on them.

Any other matters? Mr. Hashey?

MR. HASHEY: Two additional matters. There was a request this morning of Mr. Pilkington I believe to do some calculations, as best he can. These have been done over the lunch hour.

CHAIRMAN: Did he get any lunch, is the question?

MR. HASHEY: Well, that is why we asked for an extra five minutes. Very briefly.

And the other issue is the one that we were talking about in relation to Mr. Secord's cross-examination. And Mr. Morrison will address.

How would you like to proceed with that? Maybe we can deal with Mr. Pilkington's calculations. He can share those with us. And we will go on from there.

CHAIRMAN: Okay. Thank you. Go ahead.

MR. PILKINGTON: Okay. The issue related to the capacity factors of the Point Lepreau unit in the years from 1995 until essentially present.

And in question was how much of lost capacity factor was as a result of fuel channel and feeder problems and how much of that lost capacity factor was due to other

causes.

Does that represent the question you asked, Mr. Coon?

MR. COON: Actually, Mr. Pilkington, it doesn't. What I was focusing on was the losses as a result of problems with the garter springs themselves, not feeders or other extraneous things but the garter springs themselves.

MR. PILKINGTON: Well, then perhaps I misunderstood your question. The reason I interpret it that way is that the fuel channels and feeders are the components that will be replaced in refurbishment.

I believe that you are trying to distinguish between lost capacity factor due to those things which would clearly be eliminated by refurbishment and loss of capacity factor due to other things, like for instance human error?

MR. COON: Actually, Mr. Pilkington, it was the change in the nature of the garter springs in the proposal to the tighter fitting system that is being proposed.

And that was the element that I was focusing in on in my line of questions.

MR. PILKINGTON: Well, I would certainly have to go away and crunch more numbers in order to come up with the specific answer to your question.

MR. COON: That would be fine. Thank you.

MR. WHITE: I think Mr. Pilkington should finish the answer that he had there relative to the outage issues. Because it is quite pertinent to what we are talking about.

MR. COON: Except it is not the answer to the question I asked. So I would appreciate the offer to go and finish the work to provide that answer. And I'm not in a hurry here. We can wait for it.

MR. HASHEY: I would ask that he might finish the answer. It is something I would bring out in redirect in any event.

CHAIRMAN: Well, you can do it on redirect, Mr. Hashey, if Mr. Coon doesn't want it out now. That is fine. You can get it out then.

MR. HASHEY: Okay.

CHAIRMAN: Mr. Morrison?

MR. MORRISON: Yes, Mr. Chairman. Before we took the lunch break I think there was some examination on the cost benefit analysis that was in exhibit A-10. And Mr. Hashey raised some concern as to whether this is relevant to this hearing.

I think we have to put it in context, that this cost benefit analysis is something that is being done for the nuclear regulator. And this cost benefit analysis has absolutely nothing to do with the economic analysis that

is being done as part of the business case.

And there is clearly -- you know, when you look at some of the questions that were put and some of the criteria that are used by the nuclear regulator in doing this analysis, it does bring in the societal issues and extranalties.

And we went through that at the generic hearing in relation to CNSC and environmental issues. And I think the Board was quite clear.

And I did get the decision out at lunchtime. And what the Board said is "The Board agrees that an evaluation of the social policy and human health issues is more appropriately carried out by the government departments with the statutory mandate to set the policy direction in each of these areas. The Board is aware that in other jurisdictions extranalties are considered in the overall environmental evaluation. It is noted however that the Board does not have the specific legislative mandate to address these issues here."

This really is getting into the area of -- clearly NB Power has an obligation to meet the requirements of the nuclear regulator. And I think the evidence is clear that it has and will continue to do so. It has to or else it won't have an operating licence.

So we can spend I'm sure a long time going through this cost benefit analysis. But really that is something for the nuclear regulator. I don't think it has any bearing, and it is my submission it has no bearing whatsoever on the economic analysis that is before the Board.

And that is my submission, Mr. Chairman.

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

MR. COON: Mr. Secord.

CHAIRMAN: Mr. Secord?

MR. SECORD: Mr. Chairman, I do not have the intent to question these numbers in terms of the extranalities. That is not the intent of my line of questioning.

My line of questioning, which only involves a few more questions, is to establish the implications of the cost benefit technology -- excuse me, cost benefit technique, the implications of that technique, for future expenditures on safety-related improvements, that is all.

So my line of questioning has to do with the implications of this technique for future expenditures at the plant. And I do not intend to question the methodologies used to derive the estimates of the extranalities themselves.

CHAIRMAN: AECL have any comments?

MR. HOWIESON: No comments.

CHAIRMAN: Thank you. Ms. Flatt or Mr. Dalzell?

MS. FLATT: Thank you, Mr. Chair. No further comments on this matter.

CHAIRMAN: Mr. Campbell, City of Saint John, any comments? Just shake your head if you haven't. Okay.

Mr. Craik is not here. Mr. Albert for Mr. Gillis, any comments?

MR. ALBERT: No, Mr. Chairman.

CHAIRMAN: Thank you. J. D. Irving? No comments? Okay. Mr. Hyslop?

MR. HYSLOP: We have no comment on this motion.

CHAIRMAN: Okay. And Saint John Energy? No comment? Shall we go into the hall?

(Short Recess)

CHAIRMAN: The Board has taken a moment to consider the argument. Mr. Secord, when you say a couple of questions, how many do you really mean?

MR. SECORD: Five.

CHAIRMAN: Look, the Board will -- if you can do this rapidly and come to the conclusion that we think you are going to come to, then fine, but we will cut you off if you start to wander. Okay.

MR. SECORD: Fine.

CHAIRMAN: So you go ahead. You have got your five questions.

Q. - Before the lunch break we were -- before the lunch break we were briefly going over the methodology used in the benefit cost analysis which is an input to determine the extent to which you invest in safety improvements at the plant, and we understood that the evaluation takes place on an ongoing basis, that it may be initiated by the applicant or it may be initiated by the Canadian Nuclear Safety Commission, and we talked generally about the methodology.

And my questions were designed to identify some of the factors that are factored into the cost side and some of the factors that are factored into the benefits side, and things like the damages associated with radioactive releases and injuries to

employees and so
on were captured
as -- on the
benefit side if
you could reduce
the probability of
those events
occurring.

Now I assume that because this takes place on an ongoing basis that over time some of the variables that influence your costs and your benefits are going to change, is that correct?

MR. GROOM: First of all, it doesn't go on on an ongoing basis. As I mentioned earlier, we have applied it in this

case at this time as a part of the exercise to review with the regulator the potential for opportunities for improvements, to look at improved safety.

We are in full compliance with the safety requirements. So that any changes we might make would be potentially incremental changes. And what we are looking for is whether there is any incremental advantage or not for some of these changes. And the consequence of the BCA process, as we call it, the output of that is one of many parameters that goes into a final decision in terms of whether or not modification or change is incorporated.

So it's just one of the many tools that is used in our discussions with the regulator. In putting this program and this process in front of the regulator, as I mentioned, it's part of an industry effort in order to come up with some process, some criteria and some standards. So the values which you see, the process that you see, are ones that are being proposed by the industry, but there is no consensus, there is no plan, there is no commitment yet that this would be part of any ongoing process. The expectation in the long term is that it could be and would be and would provide some value.

Q. - And presumably some of these issues reoccur. For example, the issue of the relocation of steam piping, I

believe the Canadian Nuclear Safety Commission has asked you to look at that before. You are looking at it again now. The results based on your BCA analysis suggest that it's not warranted at this time. And am I correct in assuming that some time in the future one might expect the Canadian Nuclear Safety Commission would request that you look at that again, is that correct?

MR. WHITE: I think the answer to that is no. We already have the answer in the record.

Q. - That is, you don't expect that the Canadian Nuclear Safety Commission will ever in the next 25 years ask you to take a look at that steam piping issue again?

MR. WHITE: We have a clear statement from staff that they say that they don't see any reason that they would bring that forward to their commission.

Q. - And presumably the commission can also initiate suggestions for safety improvements, isn't that the case?

MR. WHITE: That issue has been thoroughly explored with them prior to this work that we are doing today, and during the course of the work that the evidence supports today and they have made a clear statement as you referenced to us this morning.

Q. - Yes. I'm really not interested in discussing particular safety improvements, but rather generally I'm making the

assumption, and I want to know if it's valid or not -- I'm assuming that if you have an existing nuclear plant that has been around for 17, 20 or what you are proposing is it may be around for 30 years plus, that the Canadian Nuclear Safety Commission as part of its ongoing regulatory role will request that you look at various safety improvements, is that not the case?

MR. WHITE: We have an ongoing process with the CNSC as we talked about. This issue has been brought up and dealt with in two forums now and we have received the statement from the CNSC staff, and on that basis we believe that provides us a basis to predict tomorrow. And so that's what we are using in this business case.

Q. - I will phrase it this way. Is it fair to say that a benefit cost analysis of a problem today would give you one answer and a benefit cost analysis of the same problem 15 years from now may well give you a different answer?

MR. WHITE: Yes.

Q. - Thank you. Thus on a number of issues which involve improvements and safety, our BCA analysis today cannot provide any guarantee that in the future -- that benefit cost analysis in the future will give you a different answer and perhaps a rationale that something would be -- some safety investment would be justified in the future

which is not justified today.

MR. WHITE: Certainly could be.

MR. SECORD: Thank you. Those are my questions.

CROSS-EXAMINATION BY MR. COON:

Q. - Now we would like to return to the question of costs which is significantly in Mr. Pilkington's evidence but not exclusively, and what we just want to do here is ask a series of questions to try and clear up all the various costs associated with operating this proposed project and make sure we have got it in all the same year dollars, so that we have a good picture of how that works.

Now one little question though first for Mr. Eagles, and that was just the cost on Phase 2 of the project that has been approved to date.

MR. EAGLES: Yes. In my presentation I had mentioned that commencing early in this year there was a recognition of work that needed to continue in order to support the schedule for starting the outage at April 2006. Our Board of Directors has given us approval to spend \$13 million, I believe is the correct figure, which we believe adequate to carry the project through to the end of August, at which time we would have expected a board meeting following the recommendation from this panel, and a decision at that time as to whether the project would

proceed or not.

Q. - So am I correct in saying this \$13 million is in addition to the \$40 million in Phase 1 for \$53 million that will be spent prior to a final decision being made on going ahead with the project?

MR. EAGLES: That's correct.

Q. - Thank you. Now, Mr. Pilkington, there is a variety of costs involved that you have identified in operating the reactor, and I guess we have already identified -- we will -- I guess we will work in 2001 dollars, because that seems to be more commonly the year that is used for estimates in the evidence. Is that the right way to go here, 2001?

MR. PILKINGTON: I'm getting a nod from my financial consultant. So yes.

Q. - Okay. So asking for direction because sometimes -- that's good. So working in 2001. Now yesterday we established the costs for the project at \$845 million translated into 2001 dollars was 627 million. So we are going to hear 627 million instead of 845, because the 845 was -- well actually Mr. White said it was 2007 dollars. So if we are going to be able to kind of compare apples with apples here we will stick with 2001 and that means the cost of the project in today's dollars was \$627

million.

That's in my notes from yesterday, it's in the transcripts. If there is some problem with that let me know, but I think that's correct.

And similarly --

MR. WHITE: Would you just hold there for a minute, Mr. Coon, please.

Q. - Sure. I can help, Mr. White. You pointed out to me actually in the Board minutes --

MR. WHITE: I understand that. But just give me a moment please. May I refer you to slide 66 in A-16.

Q. - 66. Okay. Got it.

MR. WHITE: My point here is that -- just so that we are all on the same number. The 627 was the number that was in the Board minutes, that is correct. But that is updated to 633 per these slides. That is what we put in the actual evidence. So 633 is the number that maybe we could reference.

Q. - Thanks. Okay. Well we will reference the 633 -- 633 million. And then we had the \$300 million for replacement fuel in 2001 dollars which was the figure provided yesterday for the 18 month period estimated to do the reconstruction.

Now, we move in to Mr. Pilkington who identified a

number of different costs incurred following refurbishment if it were to go ahead.

Now first, Mr. Pilkington, you identify what we call ongoing capital costs after the plant is refurbished. And I will refer to your evidence in A-1, page seven of Mr. Pilkington's evidence.

MR. EAGLES: Page number?

Q. - Sorry, page seven. That is table 1, projected ongoing capital spending 2001 dollars. I started counting in 2008. Would that be fair in terms of post refurbishment capital spending?

MR. PILKINGTON: Yes, I believe that would be fair.

Q. - Okay. So as I -- my math tells me there is about \$374 million in ongoing capital spending post refurbishment. I hate to do this to you but maybe your colleague there can add it up while we are talking and just confirm that number.

MS. MCKIBBON: Could you repeat the number, please?

Q. - \$374.2. My math might be a bit rusty so. Anyway, while she is doing that. Can you just explain, Mr. Pilkington, the kinds of things that would contained in this ongoing capital spending?

MR. PILKINGTON: I could be more precise if I referred to the actual evidence. But if you would like just an

overview from the top of my head I can do that.

Q. - Well we can go along. Because you are right. There are some things in the evidence. On page nine and 10 of your evidence you describe a number of capital expenditures in the amount of -- a total I think \$38 million related to life extension activities that would be carried out post refurbishment. That is part of it.

MR. PILKINGTON: That is correct.

Q. - Yes. It is part of it. So that accounts for 38 million of this larger figure.

Now the question is the balance of it, let's see, in A-13 we actually ask you to itemize that for us. So if we go to exhibit A-13, CCNB supplemental 2, yes, page -- actually page 3 of CCNB supplemental 2 there is a table there which you did for us. Would you -- now again, I summed these and got -- I will keep your colleague busy -- \$236.5 million in this case. And I would assume that you would consider these to be routine capital improvements.

They deal with expenditures, warehouse facilities, cannisters and baskets, environmental qualification vehicle replacement, so on and so forth.

MR. PILKINGTON: These would certainly be reoccurring capital expenditures, yes.

Q. - Okay. So those are reoccurring. So we have got these

reoccurring capital expenditures. We had the life extension capital expenditures that would have to be spent post refurbishment like -- I think one of the ones that was mentioned in the present issue are the computers some time later in the future.

MR. PILKINGTON: That was the largest single expenditure, yes.

Q. - Right. It stuck in my head. Okay.

Now there are capital expenditures, are there not, that occur which would not be considered ongoing or reoccurring, I should say was the word you used, reoccurring capital expenditures that would also not relate to the licence extension requirement -- life extension requirements. When something breaks you have got to fix it. Is capital expenditures associated with that?

MR. PILKINGTON: There are capital expenditures which occur on a year to year basis which would be attributed to either cost effective improvements to the design where there would be a recognized payback period on doing the investment in the plant. And also to replace equipment that as they become obsolete requires a different design to replace it.

Q. - All of those things. And it would also include to

replace things that break or are damaged in some way?

MR. PILKINGTON: Well things that break and are damaged are usually replaced under the maintenance program which is an OM&A cost.

Q. - So when you have to purchase -- when you have to purchase parts or components to replace something that has malfunctioned that is contained in the O&M budget not the capital budget?

MR. PILKINGTON: I am not big on the rules of defining between capital and O&M. But in a general sense if you are doing repairs and buying parts for those repairs and not improving the facility then that would be O&M.

Q. - If we take a look at the historical experience with Point Lepreau in the same exhibit and go to CCNB supplemental 9, from the same volume.

MR. MACNUTT: What was that reference again, please?

Q. - CCNB supplemental 9 in A-13.

Now if we can look on page 12 of the table there are three columns, the third column listing capital expenditures from 1983 to 2000 to the present day. These capital expenditures, Mr. Pilkington, are sort of the actual capital expenditures for Point Lepreau to date. Is that correct?

MR. PILKINGTON: That is correct.

Q. - And here I also summed them up and got approximately \$253 million. So keep that track of that.

Now, if you will just keep that table open for a minute and go to A-5, exhibit A-5 CCNB-42. Got it? Now this is an accounting of planned shutdowns that were non -
- carrying out nonroutine work, weren't involving routine maintenance.

And my question here is these unplanned -- or sorry, these planned shutdowns whose activities were other than routine maintenance, were there capital costs involved in carrying out this work?

MR. PILKINGTON: Just give me a moment --

Q. - Sure.

MR. PILKINGTON: -- to review the last piece of material.

It is quite conceivable that there would be a small amount of capital work done during these outages.

But from the descriptions of the nature of the nonroutine work within them -- well, let me backtrack. It's really hard to say.

I believe the question that was asked was around nonroutine work. There may have been installation of capital equipment within those outages. It is just that the primary reason for taking the outage was nonroutine work.

Q. - So this small amount of capital work that may be here would therefore be not reoccurring capital expenditures. How would you label the nature of the capital expenditures that might be part of this?

MR. PILKINGTON: I cannot determine it from the information here. In fact I also cannot determine that it is a small amount.

Q. - Okay. I will strike that. So there may or may not be capital expenditures here. We can't determine that. If there were, it is obviously not reoccurring in nature.

Is there a label that you would use around the shop to describe this kind of capital expenditure, nonreoccurring?

MR. PILKINGTON: Well, in fact just from the information that is here, I cannot identify specific capital work that would have been done.

For instance, a shutdown in 1995 of 176 days would have been a significant opportunity to do some capital work, maybe routine, maybe nonroutine.

Q. - Well, when you buy a pressure tube -- like for example let's take this -- where is it -- yes, May 24th 1998, the nature of the nonroutine work was to replace the pressure tube in R-16.

Now when you acquire -- when you purchase a pressure tube how is that accounted for? Is that a capital

expenditure?

MS. MCKIBBON: Originally it would have been as part of the original construction.

Q. - I'm sorry. Can you clarify that? This is to replace a pressure tube. So would you not have had to in 1998 go out and actually acquire the pressure tube to install it?

MS. MCKIBBON: I may have misunderstood your question, Mr. Coon. Could you repeat it please?

Q. - Yes. Well, in 1998 the nature of the nonroutine work was to replace a pressure tube at the reactor. So presumably you had to purchase a new pressure tube to replace the old one.

And I'm just wondering, wouldn't that be considered a capital expenditure?

MS. MCKIBBON: I would have to go back and check. We have described it as corrective maintenance. And so as we describe it there it may well have been expensed in that year. I would have to check.

MR. PILKINGTON: If I can -- if I can jump in again. I believe the test is whether it extends the life of the component or the facility.

In the case of R-16, although we installed a new pressure tube that theoretically has a 25 to 30-year life, in fact it can never -- its life will never exceed the

rest of the reactor. So that when we -- if and when we refurbish the reactor it will also be replaced.

So my suspicion would be that we would have identified that as a maintenance spare, not as a capital item.

Q. - Yes. Well, that is the sort of nub of this. What I'm trying to get at is in terms of where these kinds of things fit when you purchase a pressure tube to replace one that has to be taken out or replace new feeder pipe components to weld into the old feeder pipes.

When you buy those kinds of things, whether they are accounted for under capital expenditures or whether they actually get accounted for under your O&M budget?

MR. WHITE: Maybe I can just help you here. When we bought the original reactor we bought a number of spare pressure tubes. And so those items were bought as capital dollars. And they are held as spares.

And when we used them, we wouldn't go out and buy another individual pressure tube at that time. Because we probably had eight or 10 of them as spares originally. And if our inventory got down on those, then we might go out and buy another one as a spare or several of them as spares at that point in time.

So that example of a pressure tube was bought originally as capital. And so it is part of the original

capital of the plant that is depreciated over time.

Normally when we would carry out that kind of a job, that would be handled under the O&M budget, the maintenance budgets of the plant. And we would use that spare that had already been purchased.

If it was a smaller component and we only had one of them that was bought originally with the plant, and we used it for maintenance, we would replace that one that is in the stores that is being depreciated over the life of the plant with a new one. And we would buy that on maintenance dollars.

Q. - Okay. Thank you. And if we can turn to page -- sorry, CCNB-41 in exhibit A-5, that would be page 101, we have a table of identifying unplanned shutdowns between 1983 and 2001 for Point Lepreau, a number of columns.

And the money column relates to, as I understand it, replacement power cost, is that correct?

MR. PILKINGTON: Yes, that is correct.

Q. - Now would there be any capital spending associated with these unplanned shutdowns?

MR. PILKINGTON: I'm afraid the answer is the same. I can't differentiate. There may be some.

Q. - Thank you. Now if we go -- let's go back. If we go back to the original evidence, exhibit A-1 on that page 7

of

your evidence, Mr. Pilkington, on the table, which projects forward the capital expenditures, I wonder if your colleague had confirmed or found a different number than mine for the total?

MR. PILKINGTON: We have a significant discrepancy in the numbers. We are 100 million lower than you are.

Q. - Okay. Good. So your number is what, Mr. Pilkington, for -- these would be the ongoing capital spending once the plant would come back on line?

MR. PILKINGTON: It was 274.9.

Q. - 274.9? Okay. Thank you. So in this estimate of \$274.9 million, we have got reoccurring capital expenditures of \$236.5 million. We have got \$38 million of capital expenditures for life extension post refurbishment, such as the computer system.

It would appear to me that your budget doesn't include any provision for nonreoccurring capital expenditures, is that correct?

MR. PILKINGTON: Well, in fact it does, yes. It includes roughly \$10 million per year -- I'm sorry, the 10 million presumably would cover some reoccurring, some nonreoccurring.

Q. - And how do you split that 10 million a year out between reoccurring and nonreoccurring?

MR. PILKINGTON: I don't actually.

Q. - So you just sort of roughly say well, some part of that is going to happen every year on average, and then there is another bit that is going to cover surprises that come along?

MR. PILKINGTON: Well, the base number of 10 million was based on industry experience that suggests that is about the level of capital spending per year on plant.

Q. - Now experience with Point Lepreau to date was 253 million. And that is more than \$10 million a year?

MR. PILKINGTON: Yes. And the 253' came from what reference, Mr. Coon?

Q. - That was the CCNB supplemental 9 in exhibit A-13. Of course it was my addition again. So it might have been off.

MR. PILKINGTON: I guess I would offer that -- that some of the expenditures that you see in the history are related to I think it is, one time capital projects that wouldn't necessarily be repeated after refurbishment.

For instance, in 1986/87, there was an unusually high amount of capital spending. And I am not sure of the exact numbers. But I do know that we put into service an on line condensate polisher in that year which was a significant design change from the original plant. So

that was really a part of the post commissioning improvement to the plant.

Then if I look at 1991/92, there is a significant expenditure. And in fact that is the year that we would have capitalized our -- our full scope training simulator and the building that was built for that and for training, and for technical offices. So there is a very large piece of permanent infrastructure there.

And then in 1995/96, I see 93.1 million. And I know that that corresponds to the SLAR project that was done. And I am not sure of the exact amount that SLAR contributed. But it was most of that cost. And we wouldn't expect to do anything like SLAR post refurbishment.

So if one dispositions a few of these I think you will find that the number comes down so that Lepreau's historic capital spending is in the same ball park as what we would see in other units.

Q. - If you just consider the reoccurring capital expenditures.

MR. PILKINGTON: No. If you just consider reoccurring and nonreoccurring capital expenditures at -- at the rate that an operating plant would require them.

Q. - But what I am pointing out is you are taking out some of

the capital expenditures and saying these are special cases so we are not going to count them?

MR. PILKINGTON: Yes. And I used the two cases of the full scope simulator and the building around it which I believe was about \$30 million. And I used the example of SLAR which we would propose never to have to do again, as another example.

Q. - So in the budget for capital expenditures for post refurbishment you are not budgeting for any special capital expenditures?

MR. PILKINGTON: Actually we are. In fact the case in point would be the replacement of the digital control computers.

Q. - I meant the -- that is clearly related to the life extension -- requirements of the life extension. But in terms of -- in terms of special capital expenditures, unanticipated capital expenditures, as things go along you are not budgeting for anything but what is required to complete the life extension and those capital expenditures that we consider reoccurring?

MR. PILKINGTON: Well I would say that there are a number of identified capital expenditures that are nonroutine, post refurbishment. And of course there is nothing there that is unidentified currently. But we would believe that any capital expenditures there would be covered within the 10

million per year.

Q. - Okay. Thank you. Now in your evidence on exhibit A-1 on page 21.

MR. DUMONT: Page?

Q. - Page 21. You have projected the operating cost forward for a refurbished Point Lepreau. Can you explain what kinds of things are included in the OM&A budget?

MR. PILKINGTON: Yes. It would be mainly the ongoing operating costs of the plant and the maintenance costs associated with maintaining the plant.

Q. - And could you also provide -- because I am not going to do this any more. I don't want to get it wrong. Provide the total budget for OM&A post refurbishment for the reconstructed Point Lepreau?

MR. PILKINGTON: You mean in fact to sum --

Q. - Yes.

MR. PILKINGTON: -- the OM&A column?

Q. - Yes. I resign from that task.

MR. PILKINGTON: Are you intending to wait for that number?

Q. - No. Just thinking. Now included in this -- this OM&A budget would there be things such as replacement power for outages? Or is that a separate budget?

MR. PILKINGTON: No. Replacement power for outages would not be included.

Q. - That is a separate budget. So it would be a different budget item line for replacement power for planned and unplanned outages?

MR. PILKINGTON: No. We don't currently add the replacement power costs as an ongoing operating cost for Point Lepreau.

Q. - Now in -- well, let me ask you why, first of all?

MR. PILKINGTON: Well I guess we look at the -- mainly the controllable costs of operating the plant. And for instance, we also don't claim the revenues from the power that is produced at the plant.

MR. WHITE: May I help you a little bit on that one possibly. You see the capacity factor on the right hand side of that chart. And the capacity factor therefore built into the corporation's business plan, recognizes what the output of the station will be. And in meeting the load of the system we schedule the power that we expect to get off of each unit in that year into the business plan. And therefore that covers all of the energy needs that are required for the province.

Each unit of course requires maintenance on a yearly basis, whether it is maintenance on a planned basis or whether you get it in an unplanned occasion. And that is really what the capacity factor represents. That is how

we build the business plan for the corporation to meet the energy needs of the province.

Q. - So, therefore, that is why in your evidence we didn't see an accounting of a projection for replacement power costs from planned or unplanned outages over the 25 year period?

MR. PILKINGTON: That is correct.

Q. - Is that -- is that accounted for some other way at NB Power in terms of purchases that might have to be made?

MR. PILKINGTON: I would say that that is a panel B question.

Q. - Mr. Marshall will not be happy with you if he doesn't think it is.

MR. WHITE: Mr. Pilkington is right. The details of how we put together the comparison between Lepreau alternative and another alternative are part of the panel B evidence.

I had indicated to you in my evidence that the advantage to refurbishing Lepreau is 234 million. But the details of that are in panel B.

MR. COON: Just let me have a second here.

CHAIRMAN: I think, Mr. Coon, it's a good time for a 15 minute break, and when I come back I will be asking the various parties if they have any comments in reference to the NEB material on confidential matters.

(Short recess)

CHAIRMAN: Any of the parties have any comments in reference to the confidential hearing procedure sheet that I have passed out? Mr. Coon?

MR. COON: I thought you were going to run through the list?
No.

CHAIRMAN: Well hopefully not everybody will.

MR. COON: Mr. Chairman, can I start?

CHAIRMAN: Yes, please.

MR. COON: Mr. Chairman, at the start here in section 2 it says that confidential information may only be disclosed to a legal counsel or other advisor to a party to the hearing who has filed a corporate declaration undertaking with the arbitrator of a Board. The advisor must not be a director, servant or employee of the party.

I myself am an employee of the Conservation Council, Mr. Secord is a director and Mr. Thompson is a director.

CHAIRMAN: It's too bad, you can't have it.

MR. COON: There you go.

CHAIRMAN: Okay. That's a very good point. No, we certainly don't want that, and we will -- Mr. MacNutt and I will make a change in that overnight to accommodate just that. And that's why I brought these things up. Okay. Anybody else have any comments on it? Mr. Dalzell?

MR. DALZELL: Well we have had an opportunity to look at

these conditions under which we would be bound I understand if we are going to be receiving this information. And for the record we would just like to say we believe that such a procedure will undermine the ability of public interest groups like ours to participate in an open transparent manner. We find these kind of conditions difficult and restrictive in a sense of the openness and transparency of which, you know, we try to promote in public hearings. So we don't think the commercial interest should outweigh the public interest in respect to this type of --

CHAIRMAN: Mr. Dalzell, you are now making the argument again as to whether or not it should remain confidential -

MR. DALZELL: Okay.

CHAIRMAN: -- or it should be open to the public. We have already made that. We believe -- the Board believes, as I said before, that we certainly believe in an open transparent public process but there are some occasions that we will go this step and we consider that this will be the appropriate way to go in reference only to those three particular documents that we are talking about. That's all. Everything else is wide open to the public.

MR. DALZELL: I would just like to make a comment about

number 5. Confidential information shall be kept in a secure storage device. Does that mean like a locked filing cabinet or a safe in one's house?

CHAIRMAN: Or in your briefcase.

MR. DALZELL: It has to be a secure storage device, correct?

CHAIRMAN: Well I think -- we would approach this with good common sense, and if you have got a briefcase that you have lost the key for then put it in there anyway. You are not leaving it lying around so that somebody can pick it up and walk out with it is basically what we are saying. In the Board's offices we have a secure filing cabinet that matters that are filed with us on a confidential basis, like financial statements, et cetera, that sort of thing, they are in there under lock and key. But for an intervenor such as yourself it's just to treat it with some reasonable respect. I think that's the issue here.

MR. DALZELL: Could I ask just for another -- just a quick point of clarification. Perhaps the Board, you know, could clarify if this is correct or not. But we have some reason to believe that the Supreme Court of Canada did make some ruling in respect to a similar type of confidentiality restriction in respect to the AECL. I'm wondering if somebody could clarify that and what impact

such a decision of the Supreme Court would have on this requirement under which we are going to be bound?

CHAIRMAN: I suggest you speak with Mr. Miller directly in front of you there. I'm sure he would be able to talk about that decision. And I think -- the Board has complete legal authority to do what it is doing and it's when you operate the discretion and when you don't. Surely you don't want to appeal it to the Supreme Court of Canada, Mr. Dalzell.

MR. DALZELL: Well not today.

CHAIRMAN: No. Okay. All right. Any other comments? Mr. Hashey?

MR. HASHEY: Yes. On these documents that were referenced, or the appendices to the report of Ernst & Young, the ones referenced by Mr. Coon, those were documents that were prepared by Ernst & Young I'm informed. It says Energy NB Power but it was done by Ernst & Young for purpose of the presentation to the executive, and then it was affixed to the whole report that then went to the Board, which of course -- and is an integral part of the report. So I would like it to be treated as part of the report.

CHAIRMAN: All right. Mr. Coon, do you have anything to say? You are going to be able to use them in cross-examination.

MR. COON: That depends on whether in the end I can find the undertaking. Mr. Hashey offered originally to really distribute the executive summary, that same document, the risk assessment report, and I'm wondering whether that will be excluded from the order or is that going to be now included in the order?

MR. HASHEY: We talked about it. I don't think I made such an offer. It is part of this report.

MR. COON: Mr. Hashey, I think the transcripts will show that you did say you were prepared to distribute the executive summary of the report.

MR. HASHEY: Well I take that under advisement. No, I --

CHAIRMAN: All right. Until such --

MR. HASHEY: If that will satisfy all this problem, we would.

CHAIRMAN: Yes. Excuse me, Mr. Hashey, but until such time as the Board has some copies, and Mr. Coon and we look at it I would just as soon wait on that particular thing.

But I want to go back, Mr. Coon, to something you just said to me about your ability to sign a confidentiality agreement. Now what are you saying here? This procedure sets it up in here. I'm going to speak with Mr. MacNutt. I don't think -- it's not necessary to have confidentiality agreements signed. The Board's order is

there. We make an order that it's to be shared with you and your party and the people that it can be shared with, and then after -- and it's to be treated in confidence, and it shall be returned and shared with nobody else.

Now we intend to enforce that order, as I'm sure you would understand that we would. We sit as commissioners and have the powers of a commissioner under the Inquiries Act and that goes as far as -- which I would be loathe to do but incarceration of somebody who breaches a Board order. Simple as that.

So I don't understand why you would have difficulty with a confidentiality agreement?

MR. COON: I guess there is two points. One is if these documents are obtained later on legally --

CHAIRMAN: Oh sure.

MR. COON: -- are we restricted by this order?

CHAIRMAN: No, of course not. It's applicable to this process and the information or documentation that you obtain as a result of being a party in this process, period. If you or Quebec Hydro happen to get it later on they don't have to pay and you could use it any way you want to.

MR. COON: The other concern I had was there are -- in the Ernst & Young report there are elements of it that were in

the evidence, the minutes, particularly the Board minutes, that are contained therein. So it would get complicated in terms of talking about -- publicly talking about things that are in evidence already that are also contained in this report. So where does that leave the Board in the order in terms of making judgment calls? In other words, we cross-examined on the 24 high risks for the refurbishment project.

CHAIRMAN: What is confidential is -- are those documents.

If you obtain information that you disclose to the public having obtained it through another source, i.e., the public record of this proceeding, that's different. The difficulty is with you that you are going to have to use your discretion and realize where you did get the information and where you didn't. Now that's difficult but that's the way it has to be done.

If any of the lawyers in the room have any suggestions to assist Mr. Coon with his dilemma here, why by all means speak up.

MR. COON: Perhaps I could take up a collection. Then we could go hire our own. Yes. All right then. So information that comes out under cross-examination and around these documents, does that become part of the public record? Or is that also --

CHAIRMAN: There will be a confidential hearing --

MR. COON: Hearing? Okay.

CHAIRMAN: -- dealing with it. And you know, I can't rule on the speculative basis. Let's see what happens. And there may be bits and pieces or a fallout from it or something like that that obviously has no import from the point of view of commercial value to NB Power, that Mr. Hashey will say, I have no problem with that going on the public record. I mean, this quite often happens.

The other experience that this Board has with confidential matters and in-camera hearings, as we call them, as with the bus company, that we regulate SMT Eastern Limited, we go in-camera and the auditor appears in front of us.

And we go through the audited financial statements of that company. Now it is a privately-held company. It has assets other than the line-run bus service which is what we regulate.

So as a result of that hearing we approve of a methodology whereby the financial reporting is split between the line-run bus operation and the other assets of the company.

Then the line-run bus company, we approve of the statements that have been taken out of the audited

financial statements dealing with line-run. And that goes on the public record.

So I'm just quoting that by way of example. There may be things that result from that in-camera hearing that will form part of the public record. But we can't deal with those until we get there.

MR. COON: Thank you, Mr. Chairman.

MR. MACNUTT: Mr. Chairman?

CHAIRMAN: Mr. MacNutt?

MR. MACNUTT: The usual practice is a transcript is kept of the in-camera session. And when that is produced, the portions of it which can be put on the record could be determined at that time.

And a portion is kept confidential. And it could be determined at that time. And the confidential portion of the transcript of the in-camera hearing would remain confidential.

CHAIRMAN: Mr. Hyslop?

MR. HYSLOP: Thank you, Mr. Chairman. To the point the Board was inquiring about comments on the appendix D or the confidential hearing procedure.

We would like to ensure that the wording I guess of who can have access would include Mr. Barnett, who is obviously a servant or an employee of the Province of New

Brunswick, so --

CHAIRMAN: Well, we -- Mr. MacNutt and I have already discussed that. He would probably represent himself as being an adviser. But no, all right, we will take that under advisement as well. All right.

Well, Mr. MacNutt and I will do something over the evening to amend that to take into consideration the difficulties that have been brought to our attention. Any other matters?

MR. HASHEY: Aside from this issue?

CHAIRMAN: Yes.

MR. HASHEY: Yes. Mr. Pilkington I believe has some more calculations.

CHAIRMAN: Okay.

MR. HASHEY: We will try again.

CHAIRMAN: Let the record show that the witness Jeanie McKibbon is absent. And counsel Mr. Hashey had mentioned to me that she would be going somewhere else.

No testimony of hers has been filed or anything else.

I guess that she has been there to assist with her computer, is that correct? So you can't ask them to do any more adding for you, Mr. Coon.

Go ahead, Mr. Pilkington.

MR. PILKINGTON: First of all I would like to correct a

statement that I made for the record. Because I had, in response to a question by Mr. Coon, suggested that fuel channel and feeder problems had been responsible for the majority of lost production at Lepreau since 1995.

And I now understand that wasn't the question that he was asking. And so my answer of saying it was responsible for the majority is then misleading.

What Mr. Coon has asked I believe is the contribution of work, repair work that has had to be done and maintenance on fuel channels relative very specifically to spacers. And so during the last break I was able to get information that I can provide him with that number.

And the number that I have calculated, and again this is a fairly rough calculation, but that work on spacers, more specifically the processes of SLAR and SLARETTE, have required 260 days of outage time between 1995 and the end of 2001.

And so that then would not be the majority alone. That would not be the majority contributor of outage time.

However I would say it is likely the single largest contributor to lost production at Lepreau between 1995 and the present.

Q. - Thank you, Mr. Pilkington. Before Ms. McKibbon left did she do the calculation sum on the OM&A budget?

MR. PILKINGTON: Yes, she did.

Q. - Go ahead.

MR. PILKINGTON: And the number is 2 billion 508.8 million.

Q. - Okay. Thank you. Now just in finishing this line around what is contained in the OM&A budget, that includes preventative maintenance costs?

MR. PILKINGTON: Yes, it does. And let me just -- what I didn't say is that that total in OM&A was starting in the year ending 2009, okay. So the first number in that sum is 97 million for the year 2008/2009.

Q. - Thank you for that clarification. Okay.

So the OM&A is that figure, 2.5 billion. And we now understand that it doesn't include the replacement power costs of outages, because that is not counted in this category?

MR. PILKINGTON: That is correct. It is not counted.

Q. - Can we just turn to exhibit A-5, CCNB-2 please? CCNB-2 in A-5 is page 58. Now here nicely the cost of replacement power for Point Lepreau to date from when it came on line have been summed up. So we don't have to rely on my poor algebra or Ms. McKibbon's computer there.

So Mr. Pilkington, it says over the life of Lepreau to date, over the 19 years, there has been \$461.9 million expended in replacement power costs, is that correct?

MR. PILKINGTON: That is correct.

Q. - Okay. But that is not accounted for in the budget going forward with the refurbishment, that category of expenditures?

MR. PILKINGTON: That category is not accounted for.

Q. - Okay. Thank you. Now also in OM&A, I assume that includes preventive maintenance costs projected?

MR. PILKINGTON: Yes, it does.

Q. - Does that include corrective maintenance costs in those projections on corrective maintenance?

MR. PILKINGTON: Yes, it does.

Q. - It does? And how do you estimate the corrective maintenance costs to build into the budget?

MR. PILKINGTON: That would be estimated based on historic values.

Q. - Okay. Now -- and those historical values you have provided, just to save everyone having to get another binder, you have provided that in interrogatories to us for Point Lepreau?

MR. PILKINGTON: That is correct.

Q. - It was \$108 million, I think. So you base it on that kind of experience and build it into the budget going forward?

MR. PILKINGTON: Well, the budgets going forward have been

estimated based on historical experience both in the ongoing O&M costs of operating plant and also in the amount of corrective maintenance that is done as a part of the ongoing O&M in operating the plant.

Q. - Thank you. Now I just have a couple of questions about insurance costs which I assume are built into the OM&A budget line. Is that where they go? The insurance costs are there?

MR. PILKINGTON: Yes.

Q. - Okay. Great. Just a second.

CROSS-EXAMINATION BY MR. THOMPSON:

MR. THOMPSON: Yes. Binder A-13, responses to supplemental interrogatories. CCNB supplemental 7, page 9.

Q. - The last paragraph on page 9, the response to the CCNB question, to limit financial exposure NB Power carries --

MR. WHITE: Excuse me, Mr. Thompson, would you just wait until we find the reference.

MR. PILKINGTON: Mr. Thompson, that was supplemental 9, page 11?

Q. - No. That was supplemental 7, page 9.

MR. PILKINGTON: Thank you.

Q. - CCNB supplemental 7.

MR. WHITE: Yes, we have the reference.

Q. - Thank you. It says to limit the financial exposure NB

Power carries nuclear property insurance on Point Lepreau.

Is -- this property insurance that's carried on Point Lepreau, is it -- how is that accounted for? Is that accounted for -- where is it accounted for in respect to Lepreau?

MR. WHITE: It's accounted for in the O & M budget.

Q. - In the O & M budget. In respect to this insurance, this nuclear property insurance is this something that -- is it required by the nuclear regulator or is it something that's put on, you know, for your advantage?

MR. WHITE: No, it's required by us to cover the asset.

Q. - By the regulator?

MR. WHITE: No. As a business it's required to cover our asset to ensure that we protect the asset against insurable loss.

Q. - In respect to this insurance, has it been used in the past at Point Lepreau? Have claims been made?

MR. WHITE: I don't know specifically but I would suggest the answer is probably yes, from time to time.

Q. - You are saying you don't know specifically. Then I guess would I take that to mean that no large claims have been made?

MR. WHITE: I'm reminded by my colleague that we used that insurance to cover the wood cover event that we had.

Q. - Now what would that have covered in the wood cover event?

Would it cover more than the equipment that was damaged?

MR. WHITE: It's property insurance and so it covers the asset that was damaged. And as an example, Mr. Pilkington spoke to having to do repairs to the heat transport pump.

And he also spoke to having to remove debris from the heat transport system. It would cover those things.

Q. - So it would cover any labour that was involved in making those repairs to those systems?

MR. WHITE: That's correct.

Q. - Do you know what the --

MR. WHITE: Minus any deductibles that would be on it.

Q. - Do you know what the amount was? I'm not asking for the specific dollar amount, but an estimate of what the amount of that particular claim would have been?

MR. WHITE: We don't know the exact numbers. We are reaching, but it's in the order of I think somewhere around \$15 million claim. And please don't hold me to that.

Q. - A fairly substantial claim?

MR. WHITE: And then it had a deductible on that. So we probably got paid less than that. Maybe 10 million.

Q. - Were there any other large incidents that resulted in claims that you recall? Plus-million dollar claims?

MR. WHITE: I'm not immediately aware of them.

Q. - What about the -- what about the event there when a cover was left off of a pump there and the piece of equipment was damaged or shifted, was there a claim involved in that?

MR. WHITE: No, it wasn't.

Q. - In respect to this particular insurance that we have been talking about, it says, This provides coverage for property damage and on-site clean up and restoration up to 1.2 billion.

Now the reason I'm asking is it mentions other insurance in the paragraph as well. But does this insurance cover anything other than your property and what is on your site? For instance, is there any coverage to say the public that may be affected in the case of a nuclear accident who may have to evacuate or whose health or property may be damaged?

MR. WHITE: Your questions have been relating specifically to nuclear property insurance, and so this relates to NB Power's asset.

Q. - And once -- am I interpreting right that once we go off of your site there, the specific land or real property that you own, that this particular insurance does not provide any coverage for anything off of that particular

land there that you own at Lepreau?

MR. WHITE: The answer is yes.

Q. - In respect to the insurance there, does -- would -- the waste management facility, would this also be covered by that insurance?

MR. WHITE: Yes.

Q. - What about things that others may have on your property that could be damaged in the case of some unforeseen event happening there?

MR. WHITE: We have general liability coverage that covers those things.

Q. - And what would be the amount of that liability coverage?

MR. WHITE: I don't know the answer but we can find that for you if you need it.

Q. - If you would, thank you.

MR. HASHEY: Is that relevant?

CHAIRMAN: Mr. Thompson, would you indicate to us where you are going with this line of questioning? I like Mr. Hashey am having difficulty in understanding its relevance here.

Q. - Well where I am going is to -- you know, the cost of this in the future of obtaining and maintaining this insurance.

CHAIRMAN: Well that is --

MR. WHITE: All of those insurance costs are included in the

business case analysis that we have presented as Panel B evidence that shows that the \$234 million present worth advantage to the nuclear option.

Q. - In respect to this insurance -- and again the continuation of this insurance going down the road with the refurbishment -- in getting -- obtaining this insurance and obviously actuaries have a look at the situation regarding your plant and the current equipment in the plant and the safety standards that it's meeting and that sort of thing, am I right in assuming that?

MR. WHITE: If you are referencing to the insurance company and them deciding what their risk exposure is in providing our coverage, yes, that's a continuing process, just like your automobile coverage is.

Q. - So the level then --

CHAIRMAN: Don't bring that up here, please.

Q. - Mine is coming sooner than yours. Anyhow, the I guess perceived condition of the plant at the time and the history of the plant and what the plant is like in the way of meeting current standards and that sort of thing, would that be taken into the equation of the -- you know, the ability to insure and the premiums?

MR. WHITE: Absolutely is. And I'm glad you brought that up. Our premiums have been decreasing because of our

improved performance in those areas.

Q. - No doubt. And whenever there is an improvement in safety the rates would fall. The -- what I'm asking is in respect to newer standards for nuclear plants, for instance, if we were going to build a new nuclear station, then obviously there would be changes from what you have there, the standards would be different I mean, in some cases.

And what would be the implications of modifying or changing equipment to meet these higher safety levels? I mean, how would that reflect on your insurance?

MR. WHITE: Well that's purely speculative. You know, as we have already said today that any changes in items that might be appropriate from a regulatory level to improved safety margins only make that risk look better normally from an insurer's point of view. But whether any specific improvement gives you any advantage in the insurance rate, they are not usually done on that basis unless it happens to be something that's extremely large. Insurers look at a broad range of issues when they are deciding on what risk they are exposed to and therefore what rates -- premium rates they may want to charge you.

Q. - What I'm asking is do you do negotiations with these insurance companies?

MR. WHITE: Yes, we do.

Q. - In respect to the -- well one more question. What is your insurance? What are the annual rates for insurance at Point Lepreau? You said they have been going down. What have the rates been in the past, and what is the annual rate -- the current annual rate of insurance and --

MR. WHITE: In overall terms we have insurance coverage that costs us annually in the order of about \$2.3 million I think, if I remember roughly. And typically for good operating years we will get a rebate of 3' to \$400,000 on that.

Q. - Yes. Has there been changes since September 11th? Are you anticipating changes because of security? What is the current status of, you know, the next upcoming insurance period?

MR. WHITE: Since September the 11th most insurers in the world have withdrawn terrorist and sabotage coverage. We had those included in our bulk insurance packages prior to that and we have had to pay specifically extra for those now.

Q. - And how much have you specifically had to pay for those?

MR. WHITE: About \$200,000.

Q. - In respect to the -- well reading on here. NB Power also has nuclear liability insurance with no deductible to

cover up to 75 million limit at which the federal government assumes responsibility under the Nuclear Liability Act. Can you explain that?

MR. WHITE: Nuclear Liability Act in Canada covers from any nuclear incident 75 million -- onwards from 75 million and the utility is required to cover up to 75 million, and in our case we insure for that amount.

Q. - Now does -- this insurance we are talking about now, is this for on-site or off-site?

MR. WHITE: It covers both.

Q. - It would cover both. It could cover both. Will the federal government also step in for the on-site provisions of that?

MR. WHITE: The Nuclear Liability Act covers for liability claims that are in excess of \$75 million.

Q. - And who administers that?

MR. WHITE: I believe it's the Department of Natural Resource and Energy federally.

Q. - You pay premiums to that?

MR. WHITE: No, we don't pay premiums. It's an act of Canada.

Q. - Well it says NB Power has nuclear liability insurance with no deductible to 75 million. Is this a gift they give you?

MR. WHITE: We pay for the insurance coverage for \$75 million. That's what the requirements are under the Nuclear Liability Act in Canada.

Q. - So they require you to obtain \$75 million in liability insurance?

MR. WHITE: Nuclear liability insurance, that is correct.

Q. - Now is this the same insurance -- is this the same insurance from the insurance company that is mentioned above?

MR. WHITE: Not necessarily, no.

Q. - Well in your case --

MR. WHITE: We have a range of insurance companies that we buy these coverages from.

Q. - So there are several insurance companies -- several agreements of insurance for Lepreau?

MR. WHITE: That is correct.

Q. - And what does this --

MR. WHITE: I'm sorry, I missed your first part there as the tape was changing.

Q. - It says, Liability insurance with no deductible to cover up to \$75 million limit, at which point the Federal Government assumes responsibility under the Nuclear Liability Act.

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

Q. - What does that mean?

MR. WHITE: It means that the utility is responsible for the first 75 million whether they insure it or however they want to cover it. I mean, they could cover it out of their profits if you wanted to. Some utilities do. In our case we insure for that. So we are insured up to a claim of \$75 million that the insurance company would have to pay out. A claim in excess of that would -- would then be advanced under the Nuclear Liability Act.

Q. - And for instance -- for instance if damage occurred off site as the result of an accident or to some member of the public then -- then you would only be liable for up to \$75 million?

MR. WHITE: The \$75 million is specifically relative to a nuclear incident. We carry liability for other purposes as a general liability coverage if that was what -- if I got your question correct.

Q. - Yes. I'm talking about a nuclear liability, something that -- that would -- the damage would result from a release of radiation at the site?

MR. WHITE: Yes, that's covered under that nuclear liability policy.

CROSS EXAMINATION BY MR. COON:

Q. - Thank you. To finish off on the OM&A budget, the other

thing that that would include -- one of the other things that would include would be fuel costs and the related cost of fuel for the reactor. Is that correct, Mr.

Pilkington? That's the way you keep track of fuel costs?

MR. PILKINGTON: Fuel is not in O&M budgets, it's a separate item.

Q. - Oh, a separate item. Okay. Well that's important to know. Okay. Now did -- was an estimate on fuel costs provided in your evidence, Mr. Pilkington, for -- for operating the plant?

MR. PILKINGTON: I believe that's in Panel B evidence.

Q. - Fuel costs? Your evidence was to provide information on the costs of operating a refurbished reactor. So --

MR. PILKINGTON: It just -- it just happens that NB Power buys all of its fuels corporately.

Q. - So it's accounted for in a separate budget?

A. That's correct.

Q. - Okay. Now you have provided exhibit A-15 which are the uranium, fuel -- the various contracts. There is four different contracts associated with fuelling the reactor, which we don't really don't need to go into detail on right now. But that's correct, there is four separate contracts related to fuelling the reactor? That includes the heavy water contract, I guess. One heavy -- one heavy

water and three contracts associated with fuelling the reactor?

MR. PILKINGTON: That's correct.

Q. - And my reading of A-15 was that they -- all those contracts are up by the time we get to 2008?

MR. PILKINGTON: There are currently none of those contracts currently goes past 2008, that's correct.

Q. - So new contracts would have to be negotiated to cover off fueling costs for Point Lepreau going forward after reconstruction?

MR. PILKINGTON: I would expect that whatever contracts are in effect when we enter the refurbishment will continue through.

Q. - And will the heavy water simply be removed and then cleaned up at Darlington or wherever it happens and brought back, or will you have to have a new purchase of heavy water?

MR. PILKINGTON: No, we will use the heavy water that currently is at the station.

Q. - Thank you. So fuel costs are covered in a separate item.

And -- but roughly fuel costs -- can you tell me what sort of -- if we thought of them as a percentage of the overall OM&A budget, although I know they are not in there, what sort of percentage would they represent?

MR. PILKINGTON: They represent between 10 and 15 percent.

Q. - Thank you. Now the one other operating cost that I could find going forward projected in the evidence is actually, I think, Mr. Groom -- exhibit A-1 of the pre-filed evidence if you went to Mr. Groom -- Groom 2, I guess in A-1. And there is an appendix to his evidence called "Used Fuel Management Plan", Appendix A-6.

Appendix A-6 in Mr. Grooms second -- second evidence part of the -- entitled "Used Fuel Management Plan". And I would like you to turn to page 1.

Now this table 1 as I understand it from this, you can infer the incremental cost for used fuel management activities for the -- in the -- in the event that Lepreau is refurbished and reconstructed. Is that true?

MR. GROOM: Yes.

Q. - And the incremental cost for used fuel management would be \$15.9 million with respect to interim on site storage if Point Lepreau were rebuilt? That's just one subtraction in this case.

MR. GROOM: I presume that what you are doing is taking the difference between the interim on site storage costs identified for a decision to not to refurbish in 2006 or -

-

Q. - Correct.

MR. GROOM: -- versus the difference to 2032?

Q. - Correct.

MR. GROOM: And you are identifying that as 15, I will accept your math.

Q. - And so that \$15.9 million would that represent the costs that would have to be spent on interim on site storage if a commitment was made to reconstruct Point Lepreau and would not be spent if we didn't go forward? Is that correct?

MR. GROOM: That would -- that 15 million that you identify was the cost that would be associated with a decision to refurbish. That would be the additional cost.

Q. - Additional cost. Thank you. And similarly, if we look at the transportation associated with the used fuel management activities summarized in this table, the additional costs if a decision was made to go ahead for the transportation activities would be \$50.9 million? Simply taking the difference between the two figures provided.

MR. GROOM: Again, I presume you have taken the differences between the two, and 50.9, that's affirmative.

Q. - Yes.

MR. GROOM: That's the number I also get.

Q. - Okay. And then finally see if we can get three for

three. The additional costs if a decision we made forward -- to go forward with Point Lepreau attributed to a final disposal facility would be 347 million, 347.1 million?

MR. GROOM: My colleague tells me that concurs, yes.

Q. - Okay. So if we just add these three figures together then we can say that there would be an additional cost of \$414 million for used fuel management activities if Point Lepreau were to be refurbished. Is that correct?

MR. GROOM: That's correct.

Q. - Okay. Thank you. So we have got 414 million there. Now Mr. Pilkington or Mr. Groom, are there other costs -- or Mr. White or Mr. Eagles, any of you -- are there other costs, operating costs going forward that are not provided in the evidence here?

We have identified two so far. One was the replacement costs for planned outages and unplanned outages. But you argued that, well, it didn't belong here or it shouldn't be counted.

And secondly, you identified the fuel costs as being accounted for by NB Power more broadly and it doesn't appear here.

Are there any other types of operating costs that don't appear in the evidence here that we should be aware of besides the ones I just mentioned?

MR. WHITE: You talk about a decommissioning.

Q. - Well, you can certainly add that in. But that's going to have to happen either -- whatever happens. But are there any other operating costs specifically attributed to rebuilding Point Lepreau and going forward with that?

MR. WHITE: I think we have covered them. We have covered the O&M costs, we covered the capital -- incremental capital costs. We have covered the capital cost of the project. Covered the nuclear fuel cost. We have covered the decommissioning and the radiated fuel costs.

Q. - Okay. Thank you. Okay. Thank you very much. My --

MR. WHITE: And of course we did already talk about the bonuses that you mentioned earlier.

Q. - Yes.

A. We are above our 80 percent. So those are obviously costed -- you deal with.

Q. - Oh, actually I meant to ask that. I forgot about that. The bonuses will be accounted for in the O&M cost line or where would they appear?

MR. WHITE: No, they are a separate item because they are dependent on performance. They really come out of your -- your increment -- incremental savings there. Come out of the revenue stream.

Q. - Okay. So they wouldn't show up on the cost anyway?

MR. WHITE: Yes. Yes. Yes.

Q. - Thank you.

MR. WHITE: And in the -- when you get into Panel B, of course, they have the details of all those things. And when we looked out for the period of time until 2032 and compared the gas option with the nuclear option, we had to account for all of the power requirements under either option all the way out to there. So you will see replacement energy costs there that balance those two things.

Q. - Yes. We will have some interesting discussions with the Panel 2 about that. Now just to sort of wrap up here. AECL is -- would be the -- if we go -- if this goes ahead will be the general contractor for the project, correct?

MR. WHITE: That's correct.

Q. - Have they been general contractor on other Canadian nuclear projects?

A. Not on Canadian, but on world ones they have been.

Q. - But domestically in Canada they haven't acted as general contractor?

MR. WHITE: The utilities have typically acted as their own general contractors in Canada. And they have acquired the services of AECL for supply either of design, design engineering, design engineering or procurement of a

nuclear steam supply plant.

Q. - Was AECL the general contractor that was used for getting the Pickering A reactors back into shape to a restart?

MR. WHITE: My understanding that AECL were engaged by Ontario Power to do engineering relative to the nuclear steam supply systems on Pickering A, yes.

Q. - Would that make them the general contractor and designer?

MR. WHITE: They were not the general contractor for that job.

Q. - Okay. Thank you. Mr. Chairman, that ends our line of questioning except for those related to the documents that we have been talking about with respect to the confidentiality matter. So I assume that we will have the opportunity to jump back in at some point to do -- to do cross on --

CHAIRMAN: I'm sorry, would you repeat that, I was --

MR. COON: That's quite all right. I'm just explaining that we finally have reached the end of our cross examination here.

I wanted to just check with you on how this would work and that we will have the opportunity I presume to jump back in at the appropriate time to cross on the documents considered confidential?

CHAIRMAN: Yes. Subject to what counsel have to say, that

certainly would be my approach. Is that we would proceed to go through cross examination until we reach the point where all intervenors have cross examined this Panel on all other matters. Then go into a closed session to deal with the three confidential documents.

MR. COON: Thank you. That clarifies it, Mr. Chairman.

CHAIRMAN: That's subject to what counsel have to say. But that appears to me at this time to be the logical way to proceed.

MR. COON: Okay. I would just like to thank the gentlemen, and please on my behalf thank -- thank Ms. McKibbon for the two days you have sat up there and answered all of our questions so well and patiently. Thank you very much.

CHAIRMAN: Thank you, Mr. Coon. Has Mr. Craik spoken to anybody in the room? I mean, he has been certainly an interested participant in this process. I know he not here today. He would be next in line for cross-examination. He hasn't spoken with anybody to speak on his behalf.

Does anybody know whether he intends to cross-examine this panel?

MR. ALBERT: Mr. Chairman, he did share with me that it was his intention. I don't know why he is not here today. But last night he told me that.

CHAIRMAN: Well I think what we will do is that we will give him the opportunity if he comes back again is to allow him to cross out of order.

Mr. Gillis left.

MR. ALBERT: Mr. Chairman, it is very much Mr. Gillis' intention to cross-examine. However he needs to see the confidential documents first.

MR. HASHEY: We don't obviously agree with that according to your ruling.

CHAIRMAN: Pardon me.

MR. HASHEY: I mean there is a lot of other things that he can cross-examine on there well outside these limited documents.

CHAIRMAN: I would presume and that is a presumption on my part that he has a cross in references to prefiled evidence that he wants to do. Is he available to do it now?

MR. ALBERT: I am afraid he is unavailable at the moment.

CHAIRMAN: Will J.D. Irving have any questions of this particular panel?

MR. WOLFE: We would like to ask some questions but we are not ready. Because we didn't expect to be so soon this afternoon. We will be first thing in the morning though.

CHAIRMAN: You kind of expected people to stay here, did

you? Okay.

MR. WOLFE: If not, we will pass.

CHAIRMAN: Well, I think the way it is coming out is that we probably should -- we should adjourn now to reconvene tomorrow morning at 9:30. And hopefully the various parties will be here and we can keep on with a normal order. Mr. Hyslop?

MR. HYSLOP: This afternoon --

CHAIRMAN: We are having trouble hearing you.

MR. HYSLOP: I am sorry. This afternoon there has been a media advisory provided by the Department of Natural Resources & Energy that a statement will be made tomorrow afternoon in the legislature which may or may not impact to some extent on these hearings. I don't know the details. But I am advised that it may well have -- have some effect.

I am also aware that in my particular case Mr. Barnett and the other advisors that I have will be at that hearing and it will make it difficult for the Province of New Brunswick to proceed with its cross-examination tomorrow afternoon if we got that far. And I do understand there may be officials from the New Brunswick Power Corporation and others that have been invited to attend this session of the House for these statements.

With that in mind, the Province of New Brunswick is requesting that as far as scheduling tomorrow that we break say at 11:30, 12:00 o'clock. I believe the statement in the legislature will be made at 1:30.

I have discussed this with some of the other parties but not all. I don't know their positions on the request for this change in schedule for half day.

CHAIRMAN: Thank you, Mr. Hyslop. Any comments from any of the other parties? We only have this room until tomorrow night at 5:00 anyway. But no comments.

MR. HASHEY: Can I clarify one point, Mr. Chairman?

CHAIRMAN: Yes. Go ahead, Mr. Hashey.

MR. HASHEY: There is an issue of who is the appropriate party to answer and this is in relation to Mr. Coon's questions, as to whether it is Panel A or Panel B in relation to the contracts, the fuel contracts I speak of.

Could I have a moment to clarify with this panel or attempt to determine which is the appropriate panel?

Obviously, we don't want to be saying it is a Panel B situation when it truly was Panel A.

CHAIRMAN: Sure. Go ahead, please.

MR. HASHEY: Maybe we could just have a moment to confer.

CHAIRMAN: Go ahead, Mr. Hashey.

MR. HASHEY: Thank you, Mr. Chairman. I think as far as the

reference to these fuel contracts and their contents that this is the appropriate panel. Maybe the chair of the panel could generally address that as to how it is -- that could be split so we don't put something off and leave an impression that it might be a Panel B issue and it isn't.

We don't want to get off into that line if we can avoid it.

MR. WHITE: The responsibility for the fuel supply contracts is really part of Panel A. I was identifying that in the economic evaluation that is part of the Panel B evidence that they have taken account with the fuel costs in that -- in that evidence.

So if there are any particular questions relative to the contracts we will do our best to respond to them.

MR. COON: I guess in terms of completeness in coming up with the overall operating costs expected I was looking for what the expected projected field costs would be over the 25 years.

MR. WHITE: And those are all listed in the Panel B evidence for the economic case.

So that information is available in Panel B.

MR. COON: Right. And you of course agree with the numbers Panel B used?

MR. WHITE: Yes.

MR. COON: Very good. Thank you.

CHAIRMAN: Mr. Dalzell?

MR. DALZELL: Could you clarify, Mr. Chairman, the status of those reports that have been subject to this confidentiality matter? Have they been made available to any of the intervenors yet? Or would that be done tomorrow?

CHAIRMAN: Some have. Mr. Hashey, can you bring --

MR. HASHEY: Mr. Chairman.

CHAIRMAN: Mr. Dalzell wants to know who does have and who doesn't have copies of the three confidential agreements. And I know the Board doesn't have their copies yet, Mr. Dalzell.

MR. HASHEY: Two documents were given to Mr. Coon in case he wish to cross-examine. And those were the Ernst & Young report and the -- the completion of codes and standards.

The other document that was requested by the Board has not been distributed to anyone. I am quite happy if the Board --

CHAIRMAN: We can't hear you.

MR. HASHEY: Sorry. It was done on the basis I assumed there might be some cross-examination by Mr. Coon on the document and on the basis of your comments this morning. But no one else has those at the moment.

CHAIRMAN: Well I think --

MR. HASHEY: We could settle -- to settle the issue, I don't have a problem with distributing the --

CHAIRMAN: I think we will come back tomorrow morning and tidy this up. But my -- frankly, subject to what Mr. MacNutt has to say, having thought about what Mr. Coon brought up and Mr. Hyslop, is that we simply expunge -- that is used a lot around here -- will expunge this document and simply add a schedule with the names of the individuals who are here who can have access to it. It is as simple as that.

And therefore we don't have to worry about whether Mr. Barnett is an advisor or an employee, or whatever. And with you Mr. Coon, whether you are an employee of the party or not.

So we will do that in the morning. But otherwise I would suggest that the sooner the parties can get copies of the documents, Mr. Hashey, the better it will be and give them a chance to review it.

MR. HASHEY: I have no problem with that.

CHAIRMAN: The one thing is that, you will note here that the confidential information should be marked confidential. That is something that I -- I think is worthwhile, you know. Have you got a confidential stamp?

Because if you don't, we have got one. No, we have one at our office.

MS. LEGERE: I have one here.

CHAIRMAN: The Secretary of the Board actually has a confidential stamp right here.

MR. HASHEY: Well, if we could have a few minutes and people would like to wait we will --

MR. HASHEY: We will put a number and identification on them so we know what document it is.

CHAIRMAN: Yes. Absolutely.

MR. HASHEY: We will do that. Do we have time obviously this afternoon to do that?

CHAIRMAN: All right. Well then the hearing will adjourn until 9:30 tomorrow morning. And Mr. Hyslop, unless somebody comes up with something contrary, 11:30 adjournment is probably just fine. Okay. Good.

(Adjourned)

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

Reporter