



National Energy Board

Reasons for Decisions

Maritime Electric Company Limited

**The New Brunswick Electric Power
Commission**

EH-4-84

January 1985

Applications

National Energy Board

Reasons for Decisions

In the Matter of

Maritime Electric Company Limited

**The New Brunswick Electric Power
Commission**

Application and Cross-Application Under The
National Energy Board Act

EH-4-84

January 1985

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Abbreviations

Abbreviations of Units of Measurement

GW.h	gigawatt hour (1 million kilowatt hour)
Km	kilometre
kV	kilovolt
kW.h	kilowatt hour
MW	megawatt
MW.h	megawatt hour
\$	dollars (expressed in Canadian funds unless otherwise stated)

Abbreviations of Names

"B.C. Hydro"	British Columbia Hydro and Power Authority
"CMPC"	Central Maine Power Company
"MECL"	Maritime Electric Company Limited
"the Board" or "NEB"	National Energy Board
"NEB Act" or "the Act"	<i>National Energy Board Act</i>
"NB Power"	The New Brunswick Electric Power Commission
"NEPOOL"	New England Power Pool
"PASNY"	Power Authority of the State of New York

Explanation of Terms

Firm Power/Energy	Electricity intended to be available at all times during the period of the agreement of its sale.
Interruptible Energy	Energy made available under an agreement that permits curtailment or cessation of delivery under defined circumstances.
Economy Energy	Interruptible energy sold by one utility to another to effect a saving in the cost of generation when the receiving party has adequate capability to carry its own load.

Split-savings
Formula

A formula for pricing energy (particularly economy energy) sold by one utility to another in which the total saving resulting from the transaction is split equally between buyer and seller.

$$\text{Price} = 1/2(\text{Seller's incremental cost} + \text{buyer's avoided cost})$$

NOTE: "incremental" (avoided") cost is the cost of generating one additional (less) unit of electric energy above (below) a base quantity.

Dispatch
(Economic
Dispatch,
independent
Dispatch)

The operating direction of a power system from a "dispatcher's office" or control centre. Dispatching includes the start-up, shutdown, and allocation of load to individual generating stations or units, the scheduling of power transfers to and from interconnected utilities, and the switching of main transmission circuits and equipment.

Economic dispatch is the dispatch of energy to effect the most economical production of energy for the system as a whole.

Independent dispatch is the dispatch of energy to one system independent of the dispatch to another system.

Recital and Appearances

IN THE MATTER OF the *National Energy Board Act* and the Regulations made thereunder; and

IN THE MATTER OF the exportation by The New Brunswick Electric Power Commission (hereinafter referred to as NB Power) of energy to Central Maine Power Company under Licence EL-140; and

IN THE MATTER OF the exportation by NB Power of interruptible energy under Licenses EL-140, EL -143 and EL-145; and

IN THE MATTER OF an application by Maritime Electric Company Limited (hereinafter referred to as Maritime Electric) dated 9 March 1984; and

IN THE MATTER OF a cross-application by NB Power dated 4 April 1984 file No. 1984-M5-1.

HEARD in Ottawa, Ontario on 30 and 31 July, 1, 2, and 3 August and in Hull, Quebec on 1, 2, 3, and 4 October 1984.

BEFORE:

R.F. Brooks	Presiding Member
A.D. Hunt	Member
J.R. Hardie	Member

APPEARANCES:

W.G. Lea	Maritime Electric Company Limited
P. Creaghan I.A. Blue	The New Brunswick Electric Power Commission
K.J. MacDonald C. Baggaley	Consumers' Association of Canada
A. Secord	Conservation Council of New Brunswick
Y. Heurtel	Hydro-Québec
J.F. Funnell, Q.C.	Manitoba Hydro
R.H. Crown	Ontario Hydro
W.F. Denny	The Province of New Brunswick
J.J. Donahue	The Power Commission of the City of Saint John
G.B. Lawson	Rothsay Paper Limited

G.H.M. Armstrong	Saskatchewan Power Corporation
J.M. Johnson, Q.C. N. Markettos	Minister of Energy for Ontario
J. Haldemann	Minister of Energy & Forestry of the Government of Prince Edward Island
J. Giroux	Attorney General for the Province of Quebec
P. Barsalou A. Macdonald	National Energy Board

Executive Summary

Note: This summary is provided solely for the convenience of the reader and does not constitute part of these decisions or the reasons for them.

Maritime Electric Company Limited (MECL), the electric utility which serves Prince Edward Island, has been receiving almost all of its electric supply requirements over two submarine cables connected to the system of The New Brunswick Electric Power Commission (NB Power). NB Power is also interconnected with Hydro-Québec, the Nova Scotia Power Corporation, and utilities in the State of Maine.

In recent years, NB Power has been purchasing energy from Hydro-Québec to the limits of the interconnections to replace energy which would otherwise be generated from fossil-fuel. The displaced generation has then been available for sale to MECL and the Nova Scotia Power Corporation, and for export.

In July 1982, Licences EL-140, EL-143 and EL-145 were issued by the National Energy Board (the Board) to NB Power for the export of interruptible energy. Condition 6 of these Licences states:

"The Licensee shall not export energy hereunder

- (a) other than energy which is surplus to the firm energy requirement of economically accessible Canadian markets at the particular time of its exportation, and
- (b) without first offering such energy, including any part thereof, to economically accessible Canadian markets, on terms not less favourable to a Canadian purchaser, after any appropriate adjustments have been made for differences in the cost of delivery, than the terms on which the export would be made."

In 1983 NB Power concluded a Power Purchase Agreement with the Central Maine Power Company (CMPC) for the sale of interruptible energy to 1991 with provision for extension to 1995. A feature of this agreement was a clause enabling either party to suspend the sales in any month in which that party would not realize either a profit or a saving, respectively, of at least 10 percent. This agreement was approved by the Board under Licence EL-140.

In apparent compliance with Condition 6 of Licence EL-140, NB Power offered to MECL the energy that it proposed to export, under two options. Under the first option, the price offered was the export price, but MECL was not offered the 10 percent benefit test referred to above. Instead, the timing of deliveries to MECL would be determined by decisions taken by CMPC under its benefit test (NB Power having sufficient surplus to make both sales). Under the second option, MECL was offered the 10 percent benefit test, but on the basis of a higher price determined by reference to the cost to MECL of generating the energy itself.

During the course of negotiations of this offer, MECL learned that since 1982 it had been paying more to NB Power for economy energy than the price charged to certain United States utilities. In MECL's view, this situation represented a breach by NB Power of Condition 6(b) of its export licenses for

interruptible energy. Similarly MECL took the position that neither of the offers made by NB Power in relation to the proposed CMPC export complied with the Licence Condition.

In March, 1984, MECL applied to the Board for orders requiring that NB Power comply with the condition of its export licences and offer energy to be exported to MECL at a price no higher than the export price. NB Power filed a cross-application disputing MECL's interpretation of the licence condition, and requesting, if necessary, an amendment to the licence conditions that would permit it to charge interconnected Canadian utilities, for energy offered to them as a result of the licence conditions, the higher of the export price or the price determined under the interconnection Agreement between NB Power and that Canadian utility. A public hearing on these applications took place in July, August and October 1984.

The Board decision is that in using the expression "terms not less favourable" in Condition 6(b) of Licences EL-140, EL-143 and EL-145 the Board intended that one of the terms would be price. Also, Condition 6(b) was intended to, and does, require that the export price, not the price formula, be offered to Canadian utilities. The Board is of the view that neither of the options offered by NB Power to MECL was in full conformity with Condition 6(b) of Licences EL-140, EL-143 and EL-145. The Board decided that it would not be in the public interest to modify this Condition. Accordingly, the Board is issuing an Order requiring that NB Power offer the energy being exported under long-term agreements, to MECL and to other economically accessible Canadian utilities, on terms not less favourable, including price, than those of the export. The specific features of an offer which would comply with Licence EL-140 Condition 6(b) are set out in Section 4.2.4 herein.

While all Members of the Board's Hearing Panel were in agreement that NB Power has not complied with Condition 6(b) of Licences EL-140, EL-143 and EL-145 in its offers to MECL and should be required to do so, one Member dissented from his colleagues on one matter: the relations that would exist between the parties if either NB Power or CMPC exercised its option to suspend deliveries of energy under the Power Purchase Agreement. In this Member's opinion, MECL should not have the right, under Condition 6(b) of Licence EL-140, to preempt or intercept the proposed export if, under the Power Purchase Agreement, the export would not take place.

Chapter 1

Background

Maritime Electric Company Limited (MECL) is an investor-owned electric utility which has served Prince Edward Island since 1918.

MECL owns 129 MW of generating capacity. It operates two oil-fired generating stations, a steam plant with a capacity of 70.5 MW and a gas turbine plant with a capacity of 38.5 MW which is used for peaking and standby purposes, all situated on Prince Edward Island. MECL also owns a 20 MW participation in the coal-fired Dalhousie No. 2 generating unit on the system of The New Brunswick Electric Power Commission (NB Power). Two submarine cables, each with a capacity of 100 MW and operating at 138 kV, link Richmond Cove, Prince Edward Island with Murray Corner, New Brunswick.

To supply its customers' demand, MECL purchased or generated a total of 531 GW.h of energy in 1983. The peak load in 1983 was 104.5 MW. Operating revenue was \$57.0 million.

Prior to 1977, when the underwater interconnection between MECL and NB Power was placed in service, all the electric power requirements of Prince Edward Island were met by generation located on the Island. Since then MECL has met an increasing proportion of its load requirements with energy supplied from the mainland. In 1983 MECL generated about two percent of its system load requirement on the Island. The terms on which MECL obtained the balance of its requirements are summarized in Appendix 1.1 and 1.2.

NB Power is a crown corporation established by the Province of New Brunswick in 1920 to supply electric power throughout the province.

NB Power operates 14 generating stations with a total capacity exceeding 3 000 MW. Hydro-electric facilities consist of four stations on the Saint John River, of which the largest is the 600 MW Mactaquac station which is used to meet peak demands. Three coal-fired stations are located in the province - the newest of these is the 200 MW Dalhousie No. 2 generator in which MECL owns a 20 MW participation for the life of the unit. NB Power operates six oil-fired plants including the 1 005 MW Coleson Cove generating station constructed in the 1970's. The 638 MW CANDU nuclear unit Point Lepreau I was placed in service in 1982.

As it developed its generation facilities, NB Power constructed interconnections with neighbouring utilities. Interconnections with Nova Scotia operate at 138 kV and 345 kV. Links with Hydro-Québec consist of the Eel River Direct Current converter station, and interconnections which permit parts of the NB Power load to be switched to connect directly to the system of Hydro-Québec; also similar facilities are under construction at Edmundston and some of the interconnections are now in service. Interconnections with the United States consist of a 69 kV link with Eastern Maine Electric Cooperative, a 345 kV link with Maine Electric Power Company and several 69 kV and 138 kV links with Maine Public Service Company.

In 1983-84 the gross system peak demand on NB Power was 2 632 MW and total energy generated and purchased was 16 299 GW.h. Revenue from operations amounted to \$768.7 million. In 1983-84

the total energy supply to the utility consisted of production from hydro plants (18 percent), conventional oil and coal-fired plants (21 percent), the Point Lepreau nuclear generating station (34 percent) and purchases (27 percent).

In recent years NB Power has purchased the maximum amount of energy available from Hydro-Quebec up to the capacity limit of the interconnections to replace fossil-fuel fired generation in New Brunswick. The output displaced from NB Power units is then available for sale in Canada or for export. Agreements under which NB Power disposes of its surplus and which were referred to during the public hearing are summarized in Appendix 1. NB Power sold about 600 GW.h to the Nova Scotia Power Corporation and to MECL in 1978 and this quantity rose to 1 260 GW.h in 1983-84. Over the years, NB Power has developed a growing market for electric power sales to New England and exports in 1983 amounted to 4 886 GW.h with a revenue of \$264 million.

Prior to 1976 there was an operating power pool, the Maritime Power Pool, comprising NB Power and the Nova Scotia utilities. In the period of 1976-1979 studies were carried out to determine the best approach to developing minimum cost electric energy supplies for the Maritime provinces.

The outcome was a proposal to form a "Maritime Energy Corporation" which would plan, finance, build, own and dispatch major new generation and transmission in the three Maritime provinces, thus operating much like a power pool for the area. However, the Maritime Energy Corporation was not established.

Chapter 2

The Applications

By an application dated 9 March 1984, MECL sought from the National Energy Board ("The Board"):

- 1.1 An order pursuant to Sections 11 and 12 of the *National Energy Board Act* ("NEB Act" or "the Act") directing NB Power to offer to MECL a part of the energy now being exported to Central Maine Power Company (CMPC) under the authority of Licence EL-140 on terms, including price, not less favourable to MECL, after any appropriate adjustments have been made for differences in the cost of delivery, than the terms upon which such energy is now being exported (the part of the energy to be offered to MECL to be that associated with 20 MW of power);
- 1.2 An order pursuant to Sections 11 and 12 of the NEB Act directing NB Power to offer to MECL prior to the export thereof under any of the interruptible Export Licences held by NB Power, including Licences EL-140, EL-143 and EL-145, all or any part of the energy which is offered to any export market as an economy energy transaction, on terms, including price, not less favourable to MECL, after any appropriate adjustments have been made for differences in the cost of delivery, than the terms upon which the export would be made;

Or alternatively

2. If the export licences which are the subject of 1.1 and 1.2 do not require NB Power to offer energy to MECL at prices as aforesaid, for an order pursuant to subsection 17(2) of the Act, altering Licences EL-140, EL-143 and EL-145 by the deletion of the following as clause (b) of Condition 6 thereof:

“without first offering such energy, including any part thereof, to economically accessible Canadian markets, on terms not less favourable to a Canadian purchaser, after any appropriate adjustments have been made for differences in the cost of delivery, than the terms on which the export would be made.”

and the substitution therefor of the following:

“without first offering such energy, including any part thereof, to economically accessible Canadian markets, on terms not less favourable and at a price not greater to a Canadian purchaser, after any appropriate adjustments have been made for differences in the cost of delivery, than the terms and the price upon which the export would be made.”

or otherwise altering such Licences as the Board deems appropriate for the purpose of ensuring that the export prices of energy exported by NB Power will not be less than the price to MECL for comparable service.

NB Power subsequently filed a cross-application dated 4 April 1984 in which it sought from the Board:

3. An order pursuant to subsection 17(2) of the NEB Act changing, altering, or varying Licences EL-140, EL-143 and EL-145 by deleting Condition 6 thereof and substituting therefor the following:

“6. The Licensee shall not export power or energy hereunder whenever and to whatever extent such power or energy is required to supply

- (a) the Licensee’s firm load requirements
- (b) any firm load of a Canadian electrical utility directly interconnected with the Licensee’s system which lacks generating capacity to meet such firm load, and
- (c) any Canadian electrical utility directly interconnected with the Licensees system willing to buy part or all of the power or energy at the higher of
 - (i) the price under relevant interconnection agreements, or
 - (ii) the export price,”

adjustments having been made corresponding to any differences in the cost on the Licensee’s system of delivering the power or energy to the said Canadian electrical utility instead of to the export customer.

4. Such further and other orders as seems just.

At the public hearing it became apparent that NB Power sought the above amendment to its Licences only if the Board found that the existing Condition 6 required that energy to be exported be offered to Canadian utilities at the export price.

Chapter 3

Foreword

Evidence presented during the hearing describes NB Power's export licences and certain relevant export practices and agreements, and the framework of energy sales between NB Power and MECL since Prince Edward Island was connected by underwater cable to New Brunswick in 1977.

Although MECL has adequate installed generating capacity to serve the electricity requirements of Prince Edward Island, the facilities involved are oil-fired plants which have high operating costs. Since 1977, MECL has increasingly relied upon the import of energy from NB Power available at prices lower than the cost to MECL of generating the energy itself. In 1983, 70 percent of the energy consumed in Prince Edward Island was purchased as economy energy from NB Power, while a further 20 MW of capacity was available on a firm basis as a result of MECL's purchase of part of the output of NB Power's Dalhousie coal-fired station. The result is that MECL's generation is on standby reserve most of the time.

Sales of economy energy between NB Power and MECL are priced by a "split-savings" formula, under which the price is the average of the incremental cost to the selling utility of generating the energy sold and the cost at which the purchasing utility could produce the energy using its own facilities (the avoided cost). This formula is frequently used in the region for transactions between Canadian utilities and for export sales.

NB Power has held export licences under the NEB Act for sales of energy to neighbouring United States utilities for many years. In July 1982 authority for export sales was continued by the issuance of Licences EL-140, EL-143 and EL-145 to NB Power for the sale of interruptible energy to three neighbouring United States utilities. Condition 6 of each of these Licences requires that energy to be exported first be offered to interconnected Canadian utilities, in the following words:

- “6. The Licensee shall not export energy hereunder
- (a) other than energy which is surplus to the firm energy requirements of economically accessible Canadian markets at the particular time of its exportation, and
 - (b) without first offering such energy, including any part thereof, to economically accessible Canadian markets, on terms not less favourable to a Canadian purchaser, after any appropriate adjustments have been made for differences in the cost of delivery, than the terms on which the export would be made.”

In 1983 NB Power concluded a Power Purchase Agreement (summarized in Appendix 1.4) with CMPC for the sale of up to 150 MW of capacity and related energy continuously until 31 October 1991, with provision for an extension by mutual agreement to 31 October 1995. NB Power agreed that the flow of energy under the agreement would be interruptible only for specified reasons, consisting generally of the necessity to meet NB Power's requirements in New Brunswick or to meet any firm sales in Canada and up to 478 MW of firm export sales. Energy sold under the Power Purchase Agreement therefore takes priority over ordinary economy sales whether to Canadian or

United States utilities. The price for energy sold under the agreement is set each month in accordance with a formula based on the split-savings principle, using a forecast of the average for the month of NB Power's incremental cost and CMPC's avoided cost.

Under the Power Purchase Agreement, CMPC undertakes to make available to NB Power a minimum transmission capacity of 270 MW to various United States utilities which are participants in unit participation agreements for the purchase of part of the output of Point Lepreau Unit 1. CMPC also agrees to continue an analysis which could lead to an increase to 330 MW of the transmission capacity allocated for NB Power's sales in the United States.

The Power Purchase Agreement was approved by the Board on 4 August 1983, and Condition 4 of Licence EL-140 was amended specifically to incorporate this agreement.

Since that time, NB Power has entered into a similar agreement with Bangor Hydro-Electric Company, which agreement has also been approved by the Board and incorporated into the Licence.

In apparent compliance with Condition 6 of Licence EL-140, NB Power offered to interconnected Canadian utilities the energy to be exported to CMPC under the Power Purchase Agreement. The offer was made to MECL by letter dated 1983-11-07, see Appendix III. In the letter, NB Power offered MECL two options under which it might purchase the energy being offered to CMPC, the first generally based on the export price and the second based on a generally higher split-savings price derived from the avoided cost of MECL rather than that of CMPC.

MECL testified that it had learned in the summer of 1983 that NB Power had abandoned its former policy of offering proposed economy exports to Canadian utilities at the export price, and had since 1982 followed a practice of maximizing the revenue from economy sales by offering its available surplus energy to interconnected utilities in the order of the highest price obtainable. Under this practice MECL had for some time been paying NB Power a higher price for economy energy than the price paid by certain United States utilities. NB Power confirmed that it had indeed made this change in policy, stating that it had advised the Board and intervenors of this change at the 1982 hearing which led to the issue of the existing export licences, and maintained that this practice was not inconsistent with the terms of these licences.

For reasons which will be discussed in the succeeding chapter, MECL argued that NB Power's policy in regard to the pricing of economy energy sales is in violation of Condition 6 of Licences EL-140, EL-143 and EL-145 to the extent that sales are made to a United States utility at a price lower than that being charged to a Canadian utility. MECL further argued that the offers made to it by NB Power of the energy to be exported under the CMPC agreement did not comply with Condition 6 of Licence EL-140. While these issues were under negotiation between MECL and NB Power, MECL refrained from opposing approval by the Board of the CMPC agreement, without prejudice to its right to bring the present application.

Chapter 4

Decision

Fundamental to the matters before the Board is the Power Purchase Agreement between NB Power and CMPC for the export sale of energy under Licence EL-140 and the interconnection Agreement between NB Power and MECL; these agreements are summarized in Appendix I.

The first matter dealt with, in Section 4.1, is the interpretation of Condition 6 of Licence EL-140. To assist the reader in following the Board's reasoning, attention is directed to the Explanation of Terms on page iii. It may also be helpful to note that if NB Power makes simultaneous energy sales to two purchasers under the split-savings formula for price, the price will be higher to the buyer which has the higher avoided cost than to the buyer with the lower avoided cost.

In Section 4.2 the Board deals with whether the offer to MECL of energy which NB Power proposed to export under the Power Purchase Agreement with CMPC conforms to Condition 6(b).

Section 4.3 refers to other export sales.

In Section 4.4 the Board examines whether it would be in the public interest to confirm or modify Condition 6 in the circumstances which exist today. The Board gives its findings and decisions on the application and the cross-application.

4.1 Licence Condition 6

MECL was in the first instance asking the Board to require NB Power to offer any power to be exported to CMPC under authority of Licence EL-140 first to MECL in conformity with the conditions of the Licence as understood by MECL.

MECL asserted that the letter of 1983-11-07 (see Appendix III) offering all or a portion of the power to be exported did not comply in full with the licence conditions and more specifically with Condition 6(b) which states:

- “6. The Licensee shall not export energy hereunder
 - (a).....
 - (b) without first offering such energy, including any part thereof, to economically accessible Canadian markets, on terms not less favourable to a Canadian purchaser, after any appropriate adjustments have been made for differences in the cost of delivery, than the terms on which the export would be made:”

MECL was of the view that not only does the expression "on terms not less favourable" mean that the offer when taken as a whole must be at least as good as the arrangement with the export customer (in this case CMPC), but that the actual price to MECL before any authorized adjustments must be no greater than the export price. MECL argued that NB Power had not complied with this requirement in respect of the offer related to the Power Purchase Agreement with CMPC.

MECL sought a remedy from the Board under Sections 11 and 12 of the NEB Act, both of which give the Board certain powers to issue orders or to give directives respecting the carrying out of the requirements of export licences. It may be noted that for these purposes under Section 12, the Board "has full jurisdiction to hear and determine all matters, whether of law or of fact:"

Counsel for NB Power in final argument drew to the attention of the Board the somewhat unusual feature of the proceedings since the Board was being requested, initially, to determine questions of law. After those questions have been resolved, the Board should turn its attention to the question of determining whether or not the findings it may reach with respect to the existing wording of Licences EL-140, EL-143 and EL-145 and particularly Condition 6(b) thereof, continue to be in the public interest. Both NB Power and MECL, depending on the Board's finding respecting the meaning of Condition 6(b), asked that the Board, if necessary, modify the Licences in a manner that they consider would be in the public interest. Much of the evidence and the cross-examination of witnesses was directed toward the latter question.

The first questions to be determined are whether the phrase, "on terms not less favourable" in Condition 6(b) includes price, and if so, is it the actual price resulting from the application of a price formula to the costs of the exporter and importer, or is it sufficient that the same formula be available.

Prior to issuing export licences for electricity the Board, in conformity with Section 83(b) of the NEB Act, must satisfy itself that the price to be charged for power exported will be just and reasonable in relation to the public interest. In the case of Licence EL-140, since the Licence was subsequently amended to specifically incorporate the Power Purchase Agreement between NB Power and CMPC, the Board evidently also has concluded that the formula for arriving at the price under the agreement was appropriate. Price is one of the fundamental provisions of a sales agreement, unless barter or exchange is involved. It must follow that the phrase "on terms not less favourable" contemplates that one of the terms will be price.

Under Paragraph 6(2)(z) of the NEB Part VI Regulations, an applicant is required to submit "evidence to demonstrate that the price to be charged by the applicant for electrical energy exported by him is just and reasonable in relation to the public interest, and in particular, that the export price

(i).....

(ii) would not be less than the price to Canadians for equivalent service in related areas."

Aside from the question with respect to what is meant by "equivalent service" and "related areas", it is noted that Paragraph 6(2)(z) commences with the words "without restricting the generality of subsection (1), information required to be furnished by any applicant described in subsection (1) shall, unless otherwise authorized by the Board, include." This means that the evidence required under Paragraph 6(2)(z) is discretionary on the part of the Board and the Board is not bound to ensure that the export price would not be less than the price to Canadians for equivalent service.

Section 15 of the Part VI Regulations also might have thrown some light on the matter wherein it says, "every licence for the export of electric power and energy is subject to such terms and conditions as the Board may prescribe, and without restricting the generality of the foregoing, is subject to every statement set out by the Board in the licence respecting

“(h) the minimum prices to be charged by the licensee for power exported or the methods by which those prices shall be derived.”

Although this is not an absolute requirement, but rather a guide to the Board with respect to what it might include in the licence, it reinforces the expectation that in most circumstances the Board would deal explicitly with the pricing issue.

There can be no doubt that the Board did examine the pricing issue before it issued Licence EL-140, and that price or the method of arriving at price was one of the terms which the Board contemplated would be offered to other interconnected Canadian utilities. Counsel for NB Power argued that in other cases where the Board intended the specific export price to be offered, additional words were added to the appropriate condition making reference to price, for example "terms not less favourable including price." Where price is not specifically mentioned, he argued, then the condition is satisfied by the offer of either the specific price or the same price formula, even though this could result in a Canadian utility paying a price higher than the export price. Counsel for NB Power therefore sought to establish that in the case of Licence EL-140, the Board, because it did not explicitly refer to price in Condition 6(b), was satisfied that the offer of the split-savings formula as found in the Power Purchase Agreement between NB Power and CMPC would be acceptable. The fact that the agreement was approved by the Board and incorporated in the Licence by amendment at a later date and that NB Power is required to make the exports in accordance with the terms of the agreement, would indicate, in NB Power's view, that the Board had examined the terms of the agreement and found them acceptable and therefore in the public interest.

In using the expression "terms not less favourable", the Board intended that one of the terms would be price. It did not make explicit in the Licence whether the price to be offered to Canadian utilities was to be the result of the application of the split-savings formula, or the formula itself.

An examination of other decisions of the Board where the expression "terms not less favourable" or "terms not less favourable including price" or similar expressions, have been used in export licences does not reveal an identifiable intention on the part of the Board to establish different types of conditions, as suggested by counsel for NB Power. Even so, it is not unreasonable to assume, on encountering a difference in wording between similar clauses in two licences, an intent existed that there be a difference in meaning. The nature of the intent may well be verifiable by an examination of the Reasons for Decision given in each case. The Board is not aware of an instance of an explanation for such a difference being provided in any decision and is of the view that such differences arise more from whether there was a desire to emphasize and make explicit, rather than implicit, the matter of price.

It would be desirable to be able to identify, if possible, a recognition by the Board that, in a case where a split-savings formula is to be used and specific reference to price is not made in the licence, the result could be that the price to Canadians might be higher than the export price. In the 1984 Hydro-Québec, NEPOOL and Hydro-Québec PASNY decisions, the Board explicitly recognized that, under certain conditions, the export price could be lower than the price to Canadian purchasers, but nevertheless found this to be in the public interest. This was based in part on the concept that the economic value to the purchaser of the energy sold was a major factor in the meaning of the words "equivalent service" in Paragraph 6(2)(z) of the NEB Part VI Regulations - for more on this please turn to Section 4.4. However, in different circumstances but also of recent time, the Board required in

the 1984 British Columbia Hydro and Power Authority (B.C. Hydro) decision that the price available to the export customer also be made available to any Canadian customer within British Columbia or Alberta. In the B.C. Hydro decision there was no suggestion that the concepts of economic value and equivalent service were related.

The need to find, if possible, explicit acceptance by the Board of a situation where prices might be higher to Canadians than to the export customer arises because, even though, as referred to above, the regulations requiring the submission of evidence to demonstrate that prices will be no higher to Canadians than to the export customer do not bind the Board to include such a condition in every licence, it has been a criterion almost invariably respected by the Board. In the Hydro-Québec PASNY and NEPOOL decisions, where there is a departure from the customary approach, the Reasons for Decision make specific reference to the factors leading the Board to such a decision. In the 1982 NB Power decision, the question of the terms of offers to Canadian utilities is dealt with at page 46. The following statement appears: "A licence condition requiring that the energy be made available to interconnected Canadian utilities on terms not less favourable to them than the terms of the proposed export would ensure that the export price meets the second price test" (ie., would be not less than the price to Canadians for equivalent service in related areas). It might also be noted that the Board went on to say, "These interruptible sales are usually made on a split-savings basis." Thus, even though the Board did not have the NB Power/CMPC Power Purchase Agreement before it at that time, it was aware that the use of the split savings formula in export contracts was a possibility. It would appear the Board had in mind that any energy exported under Licence EL-140 would be at a price that would not be less than the price to Canadians for equivalent service in related areas, even though it was aware that a split-savings method might be employed to determine the export price.

NB Power argued that, notwithstanding the higher price charged to MECL, the offer of the split-savings formula was nevertheless an offer of terms not less favourable. Because the split-savings price is the average of NB Power's incremental cost and the purchaser's avoided cost, and because MECL's avoided cost is higher than that of CMPC, the saving to MECL would be higher than to CMPC. NB Power argued that, in terms of the second price guideline, the services offered to the two customers are not equivalent, because of the greater economic value of the saving to MECL.

In the Board's view, this argument has no application to the interpretation of Condition 6(b). It is sufficient to note that, in contrast to the Board's Hydro-Québec decisions, the 1982 NB Power decision contains no reference to this argument, and the excerpts from NB Power's evidence in that hearing that were quoted in argument do not disclose any reference to it. It cannot be suggested that the Board accepted that hypothesis in drafting Condition 6(b).

Notwithstanding NB Power's argument, the Board believes that the service to MECL and CMPC would be equivalent. The service is the same from a physical point of view, that is, it is the sale of economy energy, available on hourly or daily dispatch, on similar conditions of interruptibility, and is generated in the same manner. There is no significant difference in cost or effort to NB Power in providing the service to either of these customers. For these reasons, the Board concludes that the service to CMPC and MECL is equivalent except for the value of the transmission access in the United States that the CMPC sale gives to NB Power. The value of that transmission is dealt with later in this report.

For these reasons the Board is satisfied that Condition 6(b) was intended to, and does, require that the export price, not the formula, be offered to Canadian utilities. Support for this conclusion may be found by examining the result of the application of the terms offered by NB Power to MECL, including the split-savings formula. The evidence showed that, because of the nature of CMPC's generating facilities compared with MECL's and because of differences in the laid-down cost of oil to the two utilities, the split-savings price would usually be less to CMPC than to MECL, where their respective avoided costs are used. If the result is in most cases less favourable to MECL, then it must be concluded that the terms leading to that result must be less favourable, in the absence of offsetting advantages of which there was no evidence.

The Board concludes that the word "terms" as used in the expression "on terms not less favourable" in Condition 6(b) includes price terms which result in an effective price not less favourable to the Canadian utility than to the export customer.

Accordingly, only if the terms offered include other offsetting advantages acceptable to the Canadian utility could the price term offered result in an actual price to a Canadian being higher than advantages acceptable to the Canadian utility could the price term offered result in an actual price to a Canadian being higher than the export price. In other words, the price to MECL should not be higher than the export price except to the extent necessary to adjust for any difference in NB Power's cost of delivery, or to recognize any situations where other terms and conditions offered to MECL offset price difference, as may be mutually agreed between the utilities.

4.2 The Offers

4.2.1 The Time of Offer

During the hearing, the Board raised with each of NB Power and MECL the question of whether, in relation to energy exported under the eight-year Power Purchase Agreement between NB Power and CMPC, Condition 6(b) required a single offer to be made to Canadian utilities encompassing the full term of the export agreement, or whether the condition required that a separate offer be made each month of the energy to be exported in the following month. This question arises since, under the Power Purchase Agreement, a new price is determined each month for sales during the following month. Both MECL and NB Power were of the view that even though the energy to be exported under the Licence is interruptible, under the terms of the Power Purchase Agreement it is "conditionally interruptible", and that with respect to interruption by another interconnected Canadian utility to meet a non-firm load, the opportunity to participate in whole or in part should be made available only once at the initiation of the export.

Condition 4 of Licence EL-140 expressly authorizes exports pursuant to the Power Purchase Agreement between NB Power and CMPC in requiring, inter alia, that the exports of energy made under the Licence be in accordance with either the Interconnection Agreement between NB Power and Maine Electric Power Company, Inc., or the Power Purchase Agreement. The latter agreement contemplates a continuous flow of energy interruptible only under certain specified conditions - see Appendix 1.4 for a summary of these conditions. It would be inconsistent with such an agreement, and therefore with Condition 4, to interpret Condition 6(b) in such a way as to require the energy exported under that agreement to be offered each month to interconnected Canadian utilities.

In the view of the Board, the monthly determination of the export price is simply one contractual term of the overall Power Purchase Agreement, and is not tantamount to a new and separate agreement each month. The two applicants have no dispute on this issue and the Board itself is satisfied that Condition 6(b) requires that an offer to participate in the sale need be made only once before the export commences. Thus, Condition 6(b) does require one offer of all or part of the energy to be exported over the term of the subject Power Purchase Agreement with CMPC.

4.2.2 Compliance of Offers

The next question to be determined is whether either or both of the two options contained in NB Power's letter of offer of 1983-11-07 to MECL comply with the requirements of Licence EL-140 and particularly of Condition 6(b).

The first option offered to MECL the same terms and conditions as contained in the Power Purchase Agreement with CMPC, including the export price. The price to MECL would have been the same price as that derived from the application of the terms of the contract between NB Power and CMPC i.e. the export price. However, in the view of MECL, it would not have been able to purchase the energy on terms not less favourable than could CMPC under the Power Purchase Agreement. According to the Power Purchase Agreement, if either NB Power or CMPC finds that its revenues or its savings, respectively, from sales at the contract price in the following month will be no more than 10 percent above its production cost or 10 percent below its avoided cost, that party may notify the other of its intention to suspend performance for that month unless the other party is willing to accept a higher or lower price, as applicable, such that the 10 percent criterion is met. Sales in that month would either proceed or be suspended at the option of the other party. Should sales be suspended for four months within the 12 months beginning with November of each year, NB Power may terminate the agreement. Further, the agreement is terminated automatically if performance is suspended for 13 consecutive months, unless the parties agree that it should continue.

Option 1 of NB Power's offer to MECL provided that "Energy under this option would be made available at the same dispatch as Central Maine Power". This is understood to mean that MECL would be required to take energy in every month in which CMPC was taking delivery of energy under its agreement, and MECL would not be entitled to energy in any month in which CMPC suspended its purchases. MECL argued that for the offer to comply with Condition 6(b), MECL should benefit from the same 10 percent benefit test as CMPC, taking energy when its own savings, not CMPC's savings, satisfy the test and having the right to suspend purchase for the month when they do not.

NB Power argued that to offer the 10 percent benefit test to MECL would in effect confer a double benefit, and thus more favourable treatment than that offered to CMPC, in that MECL would not be entitled or required to purchase energy in a month in which CMPC exercised its option under its benefit test to suspend deliveries. MECL would therefore be protected both by its own option to suspend purchases and that of CMPC. This argument appears to assume the effect of Condition 6(b) is that, if no energy is being exported in a given month, no energy is available to MECL on the export terms. However, in the Board's view Condition 6(b) does not require that the exercise by CMPC of its option have any effect on deliveries to MECL. As noted earlier the Board has concluded that, in relation to the CMPC energy, Condition 6(b) requires a single offer encompassing the full term of the CMPC agreement, not an offer each month. Once the offer required by Condition 6(b) has been made to MECL and either accepted or rejected, Condition 6(b) would have no further effect on the deliveries

made under an agreement with either MECL or CMPC. MECL therefore would not receive a double benefit but only the benefit of the 10 percent criterion applied to its own avoided cost.

Even if the effect of Condition 6(b) were to be as assumed by NB Power's argument, the question remains whether MECL, its receipts of energy being subject to a decision by CMPC based on savings to CMPC of 10 percent, has available to it terms not less favourable than those accorded to CMPC. For the terms to be not less favourable to MECL, it would seem that MECL should have the right to examine the price in relation to its own avoided costs, and to reach an independent decision on whether to suspend the purchase. It should not be tied to or be bound by an independent decision of CMPC. An offer to MECL which provided that MECL could not purchase in months in which CMPC suspended its purchases would, given MECL's higher avoided cost, constitute the addition of a term less favourable to MECL than the terms and conditions offered to CMPC.

The second option offered by NB Power to MECL included the right to suspend deliveries in any month in which MECL would not save 10 percent of its avoided cost, but the price of the sales would be based on MECL's avoided costs rather than those of CMPC. This would result in a higher price to MECL than the export price. For the reasons already given in Section 4.1, the Board finds that this option was not in conformity with the requirements of Condition 6(b).

The Board is therefore of the view that neither Option 1 nor Option 2 was in full conformity with Condition 6(b) of the Licence, and that NB Power should be directed to make an offer to MECL that does conform. Since the offers contained in the letter of 1983-11-07 do not comply with Condition 6(b), it is unnecessary to decide whether these offers are still open to acceptance.

4.2.3 Other issues

There are other aspects in connection with the offer which were raised during the hearing, and which, therefore, must be dealt with by the Board. One is the question of whether MECL's right to pre-empt a proposed export carries with it the right to a preference in the determination of NB Power's cost, in circumstances where NB Power is capable of proceeding with the export sale by bringing on higher-cost generation. It is the view of the Board that the Licence does not require the terms to be more favourable, but only not less favourable. Therefore, should MECL in response to the new offer that is required to be made by NB Power decide to pre-empt in whole or in part the export, the ranking or stacking order is immaterial since MECL would receive the same price offered to CMPC for the quantities of energy which it actually pre-empts, unless NB Power wishes to extend more favourable treatment on its own initiative.

Another matter is hourly dispatch. The Power Purchase Agreement with CMPC provides for dispatch hour-by-hour to accommodate the variations in the CMPC system load. In the view of the Board, any offer made to MECL should, to satisfy Condition 6(b), provide to MECL similar conditions of hour-by-hour dispatch independent of the CMPC dispatch.

NB Power further suggested that if MECL were able to obtain energy (in this case economy energy where the price is determined by means of a split savings formula) outside the framework of the existing Interconnection Agreement between NB Power and MECL, this would be contrary to that agreement. The inconsistency of NB Power's position was pointed out by MECL, by reference to NB Power's request that at any time that there would be only enough surplus to make either an export sale or a sale of the same energy to a Canadian utility, it should be permitted to charge the Canadian utility

the higher of the export price or the price determined under its Interconnection Agreement with NB Power. If NB Power wishes to depart from the Interconnection Agreement when that is to its advantage, it should not raise the matter of conflict with the Interconnection Agreement as an argument against the imposition of a price lower than the price determined by the Interconnection Agreement. In any event, the NEB Act provides that NB Power may not export energy except in accordance with the conditions of its export licences. By law it is the licence condition that must prevail in the event of any conflict with a term of the interconnection Agreement.

4.2.4 New Offer Required

It is clear that the export to CMPC is not a random, if and when available, sale of energy of the economy type which system operators may work out by hourly or daily telephone conversations. Rather, it is a relatively long-term contractual package under which NB Power agrees to sell energy to CMPC during an eight-year period subject to specific terms and conditions. In the Board's view, it follows that the one-time offer to Canadian utilities should correspond as closely as practicable to the contractual package under which the export would be made. The Board recognizes, however, that because of the nature of the export contract, it is impossible to make Canadian offers identical. Nor would such offers, if accepted, result in Canadian utility purchases identical to those by CMPC. In the case at hand, it must be recognized that, within the terms of an agreement corresponding to that between NB Power and CMPC, MECL could be buying energy in a month when CMPC had declined to purchase, the price to MECL being, with the appropriate adjustments for delivery cost and other differences, the price which CMPC would have paid.

It must also be recognized, again because of the nature and terms of the contract between NB Power and CMPC, that MECL, in accepting a corresponding contractual package, would be exposed to the possibility that its agreement would be effectively terminated if the NB Power/CMPC contract were terminated pursuant to any of the several contractual conditions providing for termination under defined circumstances. In the event of termination of the NB Power/CMPC Power Purchase Agreement, there would cease to be an export agreement; there would be no export, no export price, and thus no basis on which the corresponding NB Power/MECL agreement could continue. This possibility, however likely or remote it may be, is one which the Board believes MECL must accept as inherent in the type of export agreement entered into by NB Power and approved by the Board.

Notwithstanding these observations, the Board believes that an offer to MECL would comply with Condition 6(b) of Licence EL-140 as clarified in this decision, if the offer contained at least the following features:

- (a) the price derived from the application of the contractual split-savings formula to the incremental cost of NB Power and the avoided cost of CMPC, as determined by the Power Purchase Agreement;
- (b) any necessary adjustment for differences in NB Power's cost of delivery;
- (c) conditions of independent dispatch;
- (d) provision for suspension or termination of the agreement under circumstances corresponding to those covered by similar provisions in the NB Power/CMPC Power Purchase Agreement.

The Board's order resulting from this decision will, inter alia, reflect these four features.

Part of the consideration involved in the NB Power/CMPC Power Purchase Agreement is an undertaking by CMPC to make available to NB Power certain additional transmission capacity in the United States. The evidence indicated that NB Power and MECL, in their negotiations in regard to NB Power's offers to MECL of the CMPC energy, had discussed a price increment to MECL to compensate for this feature of the CMPC agreement. The Board would have no objection to NB Power including in its offer to MECL a term providing for reasonable compensation to NB Power for the value of the CMPC transmission service, and would expect that the parties would reach agreement on the appropriate compensation.

The offer of NB Power is to be made within 15 days of the receipt of the Board's order, and MECL shall have, in the first instance, 15 days in which to indicate whether it wishes to pursue the offer. If MECL so indicates, negotiations should begin immediately to complete the arrangements necessary to give effect to the delivery of energy on terms not less favourable than those available to CMPC.

The evidence in the hearing showed that NB Power, currently and for at least the immediate future, has sufficient surplus energy to satisfy the requirements of both MECL and CMPC. It is therefore unnecessary for the Board to order NB Power to cease its exports to CMPC, provided the negotiations are completed within a reasonable period.

If MECL should agree to purchase the energy offered by NB Power, the question arises as to which of the MECL or CMPC sales should be curtailed first in the event that NB Power should be unable to supply both at any time during the eight-year term. If NB Power had complied with Condition 6(b) and made the offer described in these Reasons, the agreement with MECL would have been executed before exports under the CMPC agreement commenced, and would have had curtailment priority. Any agreement that may result from the offer to MECL required by these Reasons must have that same priority.

Any other contracted term exports in progress as of the date of this decision under Licences EL-140, EL-143, and EL-145 should have been offered to economically accessible Canadian utilities on a basis consistent with the Board's findings respecting the meaning of Condition 6(b) of Licence EL-140 (the wording of Licence Condition 6(b) being identical in all three Licences). NB Power is therefore directed to make conforming offers where this has not already been done. This is a recognition that there must be compliance with the licence conditions in effect at the time of any contemplated export. Where sales are made to Canadian utilities as a result of these offers, any necessary curtailment of deliveries should be made to the corresponding export sale ahead of the domestic sale.

4.3 Other Exports

With regard to exports of economy energy by NB Power under Licences EL-140, EL-143 and EL-145, MECL requested an order directing NB Power to offer any such export to MECL on terms, including price, not less favourable to MECL, after adjustments for the cost of delivery, than the terms upon which the export would be made. In accordance with the above reasoning, the Board finds that Condition 6(b) of each of these Licences requires that such an offer be made in respect of not only future exports under written contract but also those of the economy type. The question of whether an order to this effect should be issued will be dealt with later in these Reasons.

4.4 The Public Interest

We must now determine whether, under Licences EL-140, EL-143 and EL-145, it is in the public interest to continue to require that any power to be exported should first be offered to economically accessible utilities in Canada at the price resulting from the split-savings formula applied to the particular export customers with adjustment for any difference in NB Power delivery costs; or whether the offer of the split-savings formula alone, even if this should result in a higher price to Canadians, would be just and reasonable in relation to the public interest. MECL sought the first, and has asked that, if necessary, the wording of the appropriate licence condition be modified to make this clear, whereas NB Power in its cross-application sought the second, and has asked that, if necessary, the wording of the licence condition be changed to accomplish this.

In dealing with these questions, it is desirable to set forth the context within which the Board approaches its task. The Board, in determining the public interest, seeks to assess that interest not only in relation to particular regions but also in relation to the country as a whole.

The Board, while seeking to achieve consistency where appropriate in assessing the public interest, has always made it clear it is not bound by precedent in this regard. It is required to reach its decisions based on the facts and circumstances of each case, which can vary in time and in place.

It is recognized that certain of the conditions which the Board may attach to electricity export licences can have an indirect impact on interprovincial trade in electricity. Section 82 of the NEB Act authorizes the Board to impose such conditions as it may find reasonable, and does not indicate any specific restrictions. In deciding what conditions to impose, the Board is required to use its own judgment aided by normal tests of consistency with the broad purposes of the NEB Act, and its perception of the public interest. Thus, a condition which affects interprovincial trade in electricity is not inconsistent with the NEB Act provided it is in relation to the export of power. Where the Board has considered that it is in the public interest to condition an export licence in a way that has an impact on interprovincial trade, it has the competence to do so.

During the hearing it was pointed out that in some past Board decisions the second price guideline established by Paragraph 6(2)(z) of the NEB Part VI Regulations has been characterized as a surplus test. In the Board's view this assessment understates the emphasis that the language of the regulation places on the specific price for a particular quality of service. However, the second price guideline may also be regarded, in part, as a surplus test, since it seeks to ensure that Canadian utilities will have the opportunity of purchasing the power at the export price. If they do not want it at that price, it is reasonable to assume that it is surplus to Canadian requirements. There are, however, other ways in which the Board may examine surplus. It may utilize forecasts of current and future capacity and demand. Thus, the second price guideline, while being something of an "acid test" with respect to surplus, is not the only means of that determination, and need not be applied in all situations for that purpose.

The situation which exists today on the NB Power system is that the utility has sufficient surplus to meet all the projected firm and interruptible requirements of its neighbouring utilities, both domestic and in the United States, admittedly in part by importing energy from Québec. We are not facing a situation where the surplus available is limited to *either* being exported *or* sold within Canada; there is sufficient to do both.

With the preceding paragraphs as background, the Board may now turn to the particular circumstances of this case. The Board has no role in attempting to assess the prudence of earlier management decisions by NB Power. Similarly, the Board has no role and is not prepared to comment on or assess the wisdom and prudence of management decisions by MECL. The situation is really quite simple. NB Power has surplus energy to export; it has obtained licences under which it may export this power; it is first required to offer the power to economically accessible Canadian electrical utilities and MECL happens to be one of those utilities.

Perhaps the most important question to be determined in this case is whether or not it is in the Canadian public interest to sell energy to foreign purchasers at a price lower than to Canadians, particularly where those Canadians are in competition with the foreign purchasers in certain industrial sectors. The Board accepts that there is competition between Prince Edward Island and Maine, particularly in some segments of the fishing industry. On the basis of the evidence presented, however, the Board cannot quantify the extent nor the manner in which higher electricity prices in Prince Edward Island would harm the competitive position of those segments of the Prince Edward Island economy.

Generally, Canada has been reluctant to export any form or source of energy at prices less than those prevailing in Canada for "equivalent service", after allowing for adjustments for taxes, transportation and other costs associated with delivery. The second price guideline of the NEB Part VI Regulations conforms with government policy in this respect. The Board is concerned, therefore, not only with the order of magnitude involved in the circumstances of this case, but also with the principle.

NB Power argued that the high cost of electricity in Prince Edward Island is to a great extent the fault of MECL and the Prince Edward Island Government. In particular NB Power has in the past offered to MECL the opportunity to participate in large-scale generation projects in New Brunswick, such as the Point Lepreau I nuclear generating station. The latter opportunity was not taken up by the Government of Prince Edward Island. Prince Edward Island having made the decisions which result in its own high cost of generation, NB Power argued that the people of New Brunswick should not be required to accept lower revenues for their energy surpluses in order to provide price relief to Prince Edward Island. However much truth there may be to these statements, the Board cannot accept the idea put forward by a witness for NB Power, to the effect that higher prices for sales by NB Power to MECL would discipline that corporation into seeking its own lower-cost sources of generation, and would thus be in the public interest. In any event, decisions whether MECL should participate in new generating units that, because of greater efficiency, would provide a source of lower-cost energy, or whether, while MECL has sufficient resources to meet its own load it should continue to depend for some period into the future on the continued availability of surplus interruptible energy from New Brunswick or from Québec via New Brunswick, is a MECL management responsibility upon which the Board is not prepared to make any comment. Nor does the Board consider to be relevant, as was suggested during the hearing, the fact that MECL is a privately-owned corporation or that the residence of shareholders of MECL is outside the province.

It was suggested by NB Power that, if the licence requires that the export price rather than the price formula be available to MECL, the latter company would benefit from prudent management decisions taken by United States utilities respecting the installation of more efficient generating capacity, thus lowering avoided costs and the export price. The second price guideline suggests that it is the export price at the border (adjusted) which is to be available in Canada. How that price is determined is a

matter between the seller and the United States purchaser, subject to the approval of the Board, and does not involve MECL or others who might wish to pre-empt the export. In other words, it is the export price resulting from the formula which the Board finds to be just and reasonable, not the formula itself; therefore whether or not MECL may be said to be benefitting from earlier prudent decisions of CMPC is immaterial.

The Board observes that the split-savings formula divides the benefits from a sale of interruptible energy so that the buyer and seller each take half of the cost savings. This formula was proposed for pricing sales to MECL under NB Power's Option 2. Should MECL decide to purchase at the CMPC price, there would be a reduction in the revenue received by NB Power from MECL as compared with the revenue that NB Power expected to receive had the Board found NB Power's offer under Option 2 to be in compliance with Licence Condition 6(b). MECL, by this same reasoning, would enjoy greater savings than under a split-savings formula in which its own avoided costs were used.

The Board is not critical of the split-savings formula as a fair way to share benefits between utilities to whose transactions it is applicable. It considers, however, that the sale between NB Power and MECL takes place under conditions where application of the traditional formula is questionable.

Evidence adduced during the hearing shows that MECL purchases, and will continue for some years to purchase, 75 percent of its energy requirements from NB Power as economy energy under the Interconnection Agreement. Further, much of the 25 percent of energy not purchased is base load energy generated under a unit participation agreement with NB Power for a 20 MW portion of the capacity of the Dalhousie coal-fired No. 2 unit. Not more than two percent of the energy consumed in Prince Edward Island will be produced by the on-Island oil-fired generators owned by MECL, most of which would be used only if the supply from NB Power were disrupted. This mode of operation characterized by unidirectional flow of energy from NB Power to MECL has come about since the installation of the cable connection to the mainland. MECL's forecast shows that this mode of operation will continue at least until 1991. Further, MECL testified that it is often advised of the price of its economy energy purchases after, rather than before, the transaction begins. This does not strike the Board as a typical relationship between generating utilities. MECL can hardly be said to be in a position to participate in the type of buy-and-sell, give-and-take transaction which characterizes the economic dispatch kind of operation where the split-savings formula usually applies.

The Board accepts as fact that as a result of its finding with respect to the meaning of Condition 6(b), and should MECL decide to pre-empt the export to CMPC there will be a reduction in revenue from MECL as compared with what NB Power would have expected to receive had the Board found that NB Power was in compliance with Condition 6(b). The Board also recognizes that should it decide not to change the Licence Condition, there may be other instances in which MECL or Nova Scotia Power Corporation may decide to pre-empt an export and that the revenues to NB Power would likewise be reduced from those it might have received had the same quantity of energy been purchased under existing interconnection agreements.

To characterize this as a transfer of revenue from one province to another or to go even further and to suggest that it would be a direct subsidy by NB Power and the people of New Brunswick to the people of Prince Edward Island, takes the definition of subsidy further than the Board is prepared to go. NB Power has already indicated in its letter to MECL dated 1983-11-07 (see Appendix III) that it would have been prepared, under Option 1, to sell this energy to MECL at a lower price than would

prevail in its Interconnection Agreement with MECL. In an either/or situation NB Power should be indifferent as between purchasers at the same price, since it would, under those circumstances, have insufficient surplus to meet the demands of both markets. Once having agreed to export at the lower price, it could not claim, if the export were pre-empted at this lower price, that it would be getting less revenue than it was already prepared to accept. Even in present circumstances, where there is adequate surplus to meet both markets, the situation still does not equate to a subsidy. In the Board's opinion the appropriate view of this aspect is that NB Power's revenue will be substantially enhanced by the export and that the net enhancement should be measured by deducting from the gross incremental value of the exports any reduction in revenue from MECL resulting from its purchases at the export price rather than at some domestically-derived higher price.

The Board agrees with the contention of NB Power that the Board should not enter into the realm of revenue redistribution as between provinces and that this is best left to, among other things, the equalization policies of the Federal Government. The fact that NB Power may as a result of the Board's decision receive less revenue from MECL than it anticipated or felt entitled to receive is not tantamount either to a redistribution of revenue or to a subsidy, unless NB Power had some right in law to that "foregone" revenue in the first place. The Board's decision as to the current meaning of Condition 6(b) makes it clear that NB Power does not have that right today. It is emphasized that we are dealing with a block or blocks of power which may be intercepted as a condition of an export licence or licences and that no export may take place unless the conditions of the licences are met. Contrary to NB Power's argument, NB Power has no right to export revenues until it has obtained an export licence and has complied with the conditions of the licence. The Board is not persuaded, therefore, that the subsidy or revenue transfer argument has weight.

NB Power suggested that because MECL's avoided costs are higher, and that therefore the split-savings formula would produce higher actual savings to MECL for the same amount of energy as compared to the savings to CMPC, this service is not equivalent. Vendors of a commodity and/or service, while they may attempt to assess the economic value to potential customers in order to arrive at an appropriate price, generally cannot discriminate in price, either because it is contrary to the law or because competition will prevent it. In the context of the second price guideline as it pertains to the export of energy, the Board is of the opinion that the concepts of economic value and equivalent service do not have the same meaning and should not be confused one with the other. A difference in the economic value between two purchasers is not, in the absence of other offsetting factors, sufficient justification to charge for equivalent service a lower price in the export market than in the domestic market.

The Board therefore decides that it would not be in the public interest to modify Condition 6(b) of Licences EL-140, EL-143, and EL-145 in such a way that NB Power would be permitted to charge Canadian purchasers, by means of the application of the split-savings formula, a price higher than the export price for any portion of the energy that might be intercepted, and that this decision is of equal application whether or not there is sufficient surplus energy to meet all requirements. NB Power should, therefore, before commencing any future sale of interruptible energy under the above-mentioned Licences, first offer the energy, on terms not less favourable, including the price that may be established from time to time for the export, to economically accessible Canadian utilities. Only that portion of the energy which economically accessible Canadian utilities decline to purchase on those terms may be exported.

Chapter 5

Disposition

The Board considers that the wording of Condition 6(b), as interpreted in this decision, is clear and that no change is necessary in order to convey the principles that the Board has enunciated in these reasons. Therefore, MECL's requested variation in the wording of the Condition is unnecessary.

For the same reason, the Board sees no need for an order requiring NB Power, in respect of future sales of energy under Licences EL-140, EL-143 and EL-145, to make offers of the energy proposed to be exported to Canadian utilities in accordance with Condition 6(b) as interpreted in these reasons. The Board is confident that NB Power, having received this decision and the supporting reasons, will comply with the requirements of Condition 6(b) of each licence without such an order.

The cross-application of NB Power is dismissed.

The foregoing, together with Board Order No. MO-9-85, constitute our Reasons for Decisions and our decisions in this matter.

R.F. Brooks
Presiding Member

A.D. Hunt
Member

Dissent Respecting One issue by Mr. J.R. Hardie

I have been completely involved in all of the discussions and determinations contained in these Reasons for Decisions and agree that NB Power has not complied with Condition 6(b) of Licences EL-140, EL-143 and EL-145 in its offers to MECL and should be required to do so. I further agree that the cross-application of NB Power should be dismissed. However, I do not agree with my colleagues' interpretation of the relations that would exist between the parties where either NB Power or CMPC exercised its suspension option under the Power Purchase Agreement. My specific disagreement is set out below.

With respect to Section 4.2.2

I agree that only one offer need be made by NB Power to MECL, such offer to be as set out in Section 4.2.4. However, in my opinion, upon receipt of the offer, MECL would have three options as follows:

- (a) reject the offer, in which case it has no further rights under the export;

- (b) accept the offer and enter into an agreement with NB Power under similar terms and conditions in which case the terms of the agreement would govern;
- (c) accept the offer and enter into an agreement similar to the one in (b) above, but which would provide that MECL would not be entitled to receive any energy under the agreement in any months during which NB Power and/or CMPC utilize the terms of the agreement to suspend or terminate the export, but which would allow it to make a similar suspension or termination based on its own costs.

It is my view that acceptance in accordance with (c) above would not require a new offer each month, but that MECL should not have the right under Condition 6(b) to pre-empt or intercept the proposed export if, under the Power Purchase Agreement, the export would not take place.

While I agree that if MECL entered into an agreement with NB Power as suggested in (b) above, which contained such terms, the transactions might occur as set out in the fourth paragraph of Section 4.2.2 of these Reasons but this may not always be the case.

With respect to Section 4.2.4

I agree that the statements made in the first two paragraphs of this section could apply to an agreement made pursuant to an acceptance by MECL as set out in alternative (b) above if the agreement so specified. However, I do not consider that the agreement would have to contain terms that would require deliveries to MECL when CMPC does not take energy, neither do I agree that that is the only basis of acceptance. In the event of termination of the NB Power/CMPC Power Purchase Agreement, my colleagues consider that MECL's rights would terminate because the export agreement ceases to exist; I believe that MECL has no right to the power and energy proposed for export unless an export takes place, or the parties wish it to take place, under the Power Purchase Agreement, and the termination of the Agreement by its terms would terminate the export, and thus terminate MECL's rights.

Terms of the Offer to MECL

If MECL were given the option to take energy under the terms and price of the Power Purchase Agreement, during any periods that the agreement was suspended, I am of the opinion that such a term would be more favourable to MECL than the terms of that Agreement. Such advantage would arise because MECL's generating costs are higher than CMPC's. While MECL would be required to take the energy even if it were not economic for CMPC to take it, MECL could escape this requirement by utilizing its own 10 percent suspension clause. Consequently, requiring NB Power to enter into such an agreement with MECL would, in my opinion, be offering more favourable terms than the export terms, and would therefore be more generous than is required by Condition 6(b) of the export licenses. Accordingly, while I agree that the offer should contain at least features (a) (b) and (d) set out in the

third paragraph of Section 4.2.4, it would comply with Condition 6(b) if it provided that MECL would not be entitled or required to take the energy during periods when the export was suspended or terminated.

J.R. Hardie
Member

Ottawa, Canada
January 1985

Appendix I

Summaries of Agreements

This appendix outlines the various agreements relevant to the applications which were filed by MECL and NB Power.

1. Interconnection Agreement Between NB Power and MECL and Maritime Electric (PEI) Limited.

An Interconnection Agreement dated 24 August 1981 between NB Power and MECL defines terms and conditions for sharing reserves in emergencies, interchange of surplus power and energy, redistribution of energy flows, operating reserves, control of reactive transfer, maintenance schedules, and coordinated development and planning reserve using interconnections on land and the two 138 kV submarine cables which run between Murray Corner, New Brunswick and Richmond Cover, Prince Edward Island.

The agreement will expire at the end of the 30th year after the in-service date of the Dalhousie Unit No.2 or subsequently on 24-months written notice by either party.

Under the agreement, economy energy is defined as energy delivered to effect a saving in the cost of generation when the receiving party has adequate generating capability available to carry its own load. Either party may suspend the supply of economy energy at any time upon reasonable notice. Unless otherwise agreed to by the Operating Committee for a specific delivery, the price of economy energy is the incremental production cost plus one half of the difference between the incremental production cost and the incremental value to the receiving party.

2. Dalhousie Unit No. 2 Ownership Participation Agreement Between NB Power and Maritime Electric (PEI) Limited and MECL.

Under an, agreement dated 24 August 1981 NB Power and MECL agreed that MECL would acquire 10 percent ownership participation in the 200 MW capacity Dalhousie No. 2 Coal/Oil-fired thermal generating unit (on the system of NB Power) for the life of the unit.

The purchase point for MECL's interest is at the low voltage terminals of the transformer of the Dalhousie unit. The delivery point is at the termination of the submarine cable at Murray Comer, New Brunswick.

MECL pays specified charges monthly. A "Transmission Agreement" defines the terms and conditions under which NB Power operates and maintains its transmission facilities to provide capability sufficient to transfer the MECL entitlement between the purchase point and NB Power's Memramcook Terminal.

The unit is operated by NB Power and is dispatched from NB Power's energy control Centre to satisfy the requirements of the parties.

3. Interconnection Agreement Between Maine Electric Power Company, Inc. (MEPCO) (previously with CMPC) and NB Power.

An Interconnection Agreement dated 31 July 1969, as amended, between CMPC and NB Power defines the facilities constructed to connect between Keswick Terminal Station, New Brunswick and a point close to Wiscasset, Maine. The interconnection crosses the international boundary at or near the Town of Orient, Maine. The agreement also defines the classification, terms and conditions of power and energy transactions.

The agreement continues in force for a period of 25 years from July 1969 and may be terminated thereafter upon 24-months notice by either party.

Under an agreement dated 31 July 1969 between CMPC and MEPCO this agreement was assigned to MEPCO with the same terms and conditions.

Under the agreement, economy energy is defined as energy delivered in order to effect an hour-to-hour saving in the cost of generation when the buyer has adequate generating resources, both capacity and energy, to carry its own load. Either party may terminate or suspend the supply of economy energy at its own option at any time.

The charge for economy energy is the seller's cost for generating and delivering such energy plus one half the difference between that cost and the cost which would have been incurred by the buyer if the buyer had generated the energy.

4. Power Purchase Agreement between NB Power and CMPC

Under an agreement dated 21 January 1983 NB Power would sell and CMPC would purchase a Reference Quantity of capacity and related energy in each month.

The Reference Quantity is 100 MW at 85 percent monthly capacity factor until 31 October 1984 and 150 MW at 85 percent monthly capacity factor for the remainder of the term of the agreement. The agreement expires on 31 October 1991 unless extended by mutual consent to 31 October 1995.

CMPC is required to take or pay for 85 percent of the energy associated with the Reference Quantity in each month, except under specified interruptions of NB Power's generating capability or if Force Majeure provisions apply. The price of energy in a given month is one half of NB Power's projected incremental production cost plus CMPC's projected avoided costs. The price is estimated by NB Power at least five days prior to the month of sale. In each month, NB Power's estimated incremental production cost is a floor price. If the export price is less than 110 percent of the floor price, NB Power may suspend performance unless CMPC agrees to pay up to 110 percent of the floor price. Each month, CMPC's estimated avoided production cost is a ceiling price. If the export price is more than 90 percent of the ceiling price then CMPC can suspend performance unless NB Power accepts a price down to 90 percent of the ceiling price.

If performance under the agreement is suspended for 13 consecutive months, the agreement terminates unless the parties agree otherwise. Should either party suspend performance for any four months in any year, NB Power has the option to terminate the agreement.

NB Power may curtail delivery to serve its own load and firm commitments entered into prior to or during the term of the agreement.

In addition, CMPC undertakes to make available to NB Power 270 MW of capacity on the CMPC 345 kV transmission line. Should the line be upgraded by 100 MW, CMPC will undertake to make an extra 60 MW of transmission capacity available to NB Power.

5. Interconnection Agreement Between Maine Public Service Company (MPS) and NB Power

An Interconnection Agreement dated 4 February 1957, as amended, between MPS and NB Power defines the terms and conditions under which the parties constructed and operate an interconnection which runs from the Beechwood Substation, New Brunswick to a substation near Presque Isle, Maine.

The agreement may be terminated on 1 September of any year by 24-months notice from either party.

6. Interconnection Agreement Between NB Power and Eastern Maine Electric Cooperative Inc. (EMEC)

The Interconnection Agreement, dated 4 August 1981, between NB Power and EMEC amends and extends the Interconnection Agreement dated 25 March 1966. The Interconnection Agreement and supplements define the interconnection facilities and transactions and provide schedules of conditions and prices for various classes of power and energy.

The agreement may be terminated at any time by mutual agreement of the parties or after 31 October 1990 upon five years notice by either party.

Appendix II

Licences No. EL-140, as amended, No. EL-143 and No. EL-145

NATIONAL ENERGY BOARD

OFFICE NATIONAL DE L'ÉNERGIE

LICENCE NO. EL-140

IN THE MATTER OF an application by The New Brunswick Electric Power Commission pursuant to the provisions of the *National Energy Board Act* (hereinafter referred to as "the Act") for a licence under Part VI thereof for the exportation of interruptible energy, filed with the Board under File No. 1923-4/N7-9.

WHEREAS an application dated the 19th day of November, 1980, as amended, has been made by The New Brunswick Electric Power Commission to the National Energy Board (hereinafter referred to as "the Board") under Part VI of the Act for a licence for the exportation of interruptible energy at points on the international boundary line between Canada and the United States of America;

AND WHEREAS a public hearing has been held commencing on the 24th day of November, 1981, in the City of Fredericton, in the Province of New Brunswick, at which The New Brunswick Electric Power Commission and all interested parties were heard;

AND WHEREAS the Board, having heard The New Brunswick Electric Power Commission and all interested parties, and having taken into account all such matters as to it appear to be relevant, has satisfied itself that the quantity of interruptible energy to be exported from the system of the New Brunswick Electric Power Commission does not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada and that the price to be charged by The New Brunswick Electric Power Commission for the interruptible energy to be exported by it is just and reasonable in relation to the public interest;

NOW THEREFORE, the Board, pursuant to section 82 of the Act, and subject to the conditions hereof, hereby issues this Licence to The New Brunswick Electric Power Commission for the exportation of interruptible energy at points on the international boundary line between Canada and the United States of America.

This LICENCE is subject to the following terms and conditions:

1. The term of this licence shall commence on the date of the approval of this licence by the Governor in Council and shall end on the 31st day of October 1990.
2. The classes of inter-utility export transfer authorized hereunder are sale, exchange and adjustment transfers of interruptible energy.
3. The energy to be exported hereunder shall be transmitted over any international power line for which a certificate of public convenience and necessity is in effect.

4. The exports of energy made by the Licensee hereunder shall be made in accordance with the Interconnection Agreement dated the 31st day of July 1969 as amended between the Licensee and Maine Electric Power Company (previously Central Maine Power Company), filed with the Board as part of Exhibit 3 at the hearing of the Licensee's application in October 1969.
5. The quantity of energy that may be exported hereunder shall not exceed 6 482.4 gigawatt hours minus the firm energy exported under licence EL-64 and the firm energy that may be exported under licence EL-137 and licence EL-138.
6. The Licensee shall not export energy hereunder
 - (a) other than energy which is surplus to the firm energy requirements of economically accessible Canadian markets at the particular time of its exportation, and
 - (b) without first offering such energy, including any part thereof, to economically accessible Canadian markets, on terms not less favourable to a Canadian purchaser, after any appropriate adjustments have been made for differences in the cost of delivery, than the terms on which the export would be made.
7. The Licensee shall interrupt or reduce the export of energy hereunder whenever, or to whatever extent, such energy is required by interconnected systems to supply firm loads within Canada.
8. The Licensee shall not, without prior approval of the Board, amend, enter into any agreement in substitution for or in addition to or terminate the Interconnection Agreement referred to in Condition 4.
9. When energy exported hereunder is generated by the burning of fuel oil, the incremental fuel cost used in any pricing formula shall be
 - (a) for imported fuel oil, the price paid by the Licensee to the importer, plus the amount by which that price was reduced by any subsidy or compensation payment from any level of government in Canada, and
 - (b) for fuel oil made from Canadian crude, the export price of such Canadian fuel oil, including any export charge.
10. Any export, which occurs at a time when oil-fired thermal plant is operating on the system of the Licensee shall, to the extent of the net output of the oil-fired plant at that time, be deemed to be an export of energy from the oil-fired plant, except in cases where the oil-fired plant has been started up for domestic needs and is kept in service purely for domestic operational reasons, or in such other cases as may, upon application, be approved by the Board.
11. The Licensee shall, within 15 days after the end of each month comprised in the term of this licence, file with the Board a report in such form and detail as the Board may specify, setting forth for that month information pertaining to transactions under the licence.

ISSUED under Part VI of the *National Energy Board Act* in the City of Ottawa, in the Province of Ontario, this 11th day of March, 1982.

NATIONAL ENERGY BOARD

G. Yorke Slader
Secretary

Approved by Order in Council
P.C. 1982-2607 dated the
3rd day of September 1982.

ORDER NO. AO-1-EL-140

IN THE MATTER OF the *National Energy Board Act* and the Regulations made thereunder; and

IN THE MATTER OF Licence No. EL-140 issued to The New Brunswick Electric Power Commission.
File No. 1923-4/N7-9.

BEFORE the Board on Thursday, the 7th day of October 1982.

UPON the Board having reviewed Licence EL-140 dated the 11th day of March, 1982, and having found that Condition 5 does not define the period of time during which the authorized quantity of energy may be exported, and that it is desirable to amend the said condition,

IT IS ORDERED THAT Condition 5 of Licence EL-140 be revoked and the following substituted therefor:

- “5. The quantity of energy that may be exported hereunder in any consecutive twelve month period shall not exceed 6 482.4 gigawatt hours minus the firm energy exported under Licence EL-64 and the firm energy that may be exported under Licence EL-137 and Licence EL-138.”

NATIONAL ENERGY BOARD

G. Yorke Slader
Secretary

Approved by Order in Council
P.C. 1982-3587 dated the
25th day of November 1982.

ORDER NO. AO-2-EL-140

IN THE MATTER OF THE *NATIONAL ENERGY BOARD ACT* and the Regulations made thereunder;

IN THE MATTER OF a variance to Licence No. EL-140 issued to The New Brunswick Electric Power Commission.
File No. 1923-4/N7-9

BEFORE the Board on Thursday, the 23rd day of March 1983

UPON the Board having issued to The New Brunswick Electric Power Commission Licence No. EL-150 dated the 3rd day of December 1982 and approved by Order-in-Council P.C. 1983-179 dated the 27th day of January, 1983;

AND UPON it appearing that the issuance of the said licence should not increase the total quantity of energy authorized to be exported each calendar year under Licence No. EL-140, as amended, approved by Order-in-Council P.C. 1982-2607 dated the 3rd day of September 1982 and P.C. 1982-3587 dated the 25th day of December 1982;

AND UPON The New Brunswick Electric Power Commission having acknowledged that the maximum amount which could be exported under Licence No. EL-140 is 6 482.4 gigawatt hours minus firm energy exported over the same transmission circuit;

IT IS ORDERED THAT Licence No. EL-140 be and the same is hereby varied by revoking Condition 5 therefrom and substitute therefor the following:

- “5. The quantity of energy that may be exported hereunder in any consecutive 12 month period shall not exceed 6 482.4 gigawatt hours minus the firm energy exported under Licences EL-64, EL-137, EL-138 and EL-150 over the international power line authorized by Certificate of Public Convenience and Necessity No. EC-III-8.”

NATIONAL ENERGY BOARD

G. Yorke Slader
Secretary

Approved by Order in Council
P.C. 1983-1677 dated the
2nd day of June 1983.

ORDER NO. AO-3-EL-140

IN THE MATTER OF THE *National Energy Board Act* and the Regulations thereunder; and

IN THE MATTER OF an application by The New Brunswick Electric Power Commission ("the Licensee") to amend Licence no. EL-140, filed with the Board under File No. 1923-4/N7-10.

BEFORE the Board on Thursday 4 August 1983.

UPON an application by the Licensee to amend Licence EL-140 issued by the National Energy Board on the 3rd day of December 1982 to allow for export of energy according to the Power Purchase Agreement dated 21st Day of January 1983 between the Licensee and Central Maine Power Company under Licence EL-140, and upon reading the submission filed;

IT IS ORDERED THAT Conditions 4 and 8 of License EL-140 be revoked and the following substituted therefor:

- "4. The exports of energy made by the Licensee hereunder shall be in accordance with the Interconnection Agreement dated the 31st day of July 1969, as amended, between the Licensee and Maine Electric Power (which assumed Central Maine Power Company's obligations and rights under the Agreement), filed with the Board as part of Exhibit 3 at the hearing of the Licensee's application in October 1969; or in accordance with the Power Purchase Agreement dated 21st day of January 1983 between the Licensee and Central Maine Power Company."
- "8. The Licensee shall not, without prior approval of the Board, enter into any agreement in substitution for or in addition to or terminate the Interconnection Agreement and the Power Purchase Agreement referred to in Condition 4."

NATIONAL ENERGY BOARD

G. Yorke Slader

Approved by Order in Council
P.C. 1983-2793 dated the
15th day of September 1983.

IN THE MATTER OF the *National Energy Board Act* and the Regulations made thereunder; and

IN THE MATTER OF an application by The New Brunswick Electric Power Commission ("the Licensee") to amend Licence No. EL-140, filed with the Board under File No. 1923-4/N7-10.

BEFORE the Board on Thursday the 23rd day of August, 1984.

UPON an application by the Licensee to amend Licence EL-140 issued by the National Energy Board on the 3rd day of December 1982 to allow for export of energy according to the Power Purchase Agreement dated 27th Day of April 1984 between the Licensee and Bangor Hydro-Electric Company under Licence EL-140, and upon reading the submission filed;

IT IS ORDERED THAT Conditions 4 and 8 of Licence EL-140 be revoked and the following substituted therefor:

- "4. (a) The export of energy made by the Licensee hereunder shall be made in accordance with the Interconnection Agreement dated the 31st day of July 1969, as amended between the Licensee and Maine Electric Power Company (which assumed Central Main Power Company's obligations and rights under the agreement), filed with the Board as part of Exhibit 3 at the hearing of the Licensee's application in October 1969; or in accordance with the Power Purchase Agreement dated the 21st day of January 1983, as amended, between the Licensee and Central Maine Power Company; or in accordance with the Power Purchase Agreement dated the 27th day of April 1984 between the Licensee and Bangor Hydro-Electric Company; or in accordance with any agreement as approved by the Board in accordance with Condition 8."
- (b) in the event of a conflict between condition 4(a) and any other condition of this licence, the latter condition shall prevail.
- "8. Any amendment or addition to, termination or substitution of, agreements referred to in condition 4 (a) shall not be effective until approved by the Board."

NATIONAL ENERGY BOARD

G. Yorke-Slader
Secretary

Approved by Order in Council
P.C. 1984-3494 dated the
1st day of November 1984.

LICENCE NO. EL-143

IN THE MATTER OF an application by The New Brunswick Electric Power Commission pursuant to the provisions of the *National Energy Board Act* (hereinafter referred to as "the Act") for a licence under Part VI thereof for the exportation of interruptible energy, filed with the Board under File No. 1923-4/N7-9.

WHEREAS an application dated the 19th day of November, 1980, as amended, has been made by The New Brunswick Electric Power Commission to the National Energy Board (hereinafter referred to as "the Board") under Part VI of the Act for a licence for the exportation of interruptible energy at points on the international boundary line between Canada and the United States of America;

AND WHEREAS a public hearing has been held commencing on the 24th day of November, 1981, in the City of Fredericton, in the Province of New Brunswick, at which The New Brunswick Electric Power Commission and all interested parties were heard;

AND WHEREAS the Board, having heard The New Brunswick Electric Power Commission and all interested parties, and having taken into account all such matters as to it appear to be relevant, has satisfied itself that the quantity of interruptible energy to be exported from the system of the The New Brunswick Electric Power Commission does not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada and that the price to be charged by The New Brunswick Electric Power Commission for the interruptible energy to be exported by it is just and reasonable in relation to the public interest;

NOW THEREFORE, the Board, pursuant to section 82 of the Act, and subject to the conditions hereof, hereby issues this Licence to The New Brunswick Electric Power Commission for the exportation of interruptible energy at points on the international boundary line between Canada and the United States of America.

This LICENCE is subject to the following terms and conditions:

1. The term of this licence shall commence on the 1st day of November 1982 and shall end on the 31st day of October 1990.
2. The classes of inter-utility export transfer authorized hereunder are sale, exchange and adjustment transfers of interruptible energy.
3. The energy to be exported hereunder shall be transmitted over any international power line for which a certificate of public convenience and necessity is in effect.
4. The quantity of energy that may be exported hereunder in any consecutive twelve-month period shall not exceed 300 gigawatt hours.
5. All exports of energy made by the Licensee hereunder shall be in accordance with the Interconnection Agreement dated 4 February 1957, as amended between the Licensee and Maine Public Service Company.

6. The Licensee shall not export energy hereunder
 - (a) other than energy which is surplus to the firm energy requirements of economically accessible Canadian markets at the particular time of its exportation, and
 - (b) without first offering such energy, including any part thereof, to economically accessible Canadian markets, on terms not less favourable to a Canadian purchaser, after any appropriate adjustments have been made for differences in the cost of delivery, than the terms on which the export would be made.
7. The Licensee shall interrupt or reduce the export of energy hereunder whenever or to whatever extent such energy is required by interconnected systems to supply firm loads within Canada.
8. The prices to be charged for the energy exported hereunder shall be not less than the prices computed in accordance with the Interconnection Agreement referred to in Condition 5.
9. When energy exported hereunder is generated by the burning of fuel oil, the incremental fuel cost used in any pricing formula shall be
 - (a) for imported fuel oil, the price paid by the Licensee to the importer, plus the amount by which that price was reduced by any subsidy or compensation payment from any level of government in Canada, and
 - (b) for fuel oil made from Canadian crude, the export price of such Canadian fuel oil, including any export charge.
10. Any export which occurs at a time when oil-fired thermal plant is operating on the system of the Licensee shall, to the extent of the net output of the oil-fired plant at that time, be deemed to be an export of energy from an oil-fired plant, except in cases where the oil-fired plant has been started up for domestic needs and is kept in service purely for domestic operational reasons, or in such cases as may, upon application, be approved by the Board.
11. The Licensee shall note, without the prior approval of the Board, amend, enter into any agreement in substitution for or in addition to or terminate the Interconnection Agreement referred to in Condition 5.
12. The Licensee shall, within 15 days after the end of each month comprised in the term of this licence, file with the Board a report in such form and detail as the Board may specify, setting forth for that month information pertaining to transactions under the licence.

ISSUED under Part VI of the *National Energy Board Act* in the City of Ottawa, in the Province of Ontario, this 11th day of March, 1982.

NATIONAL ENERGY BOARD

G. Yorke Slader
Secretary

Approved by Order in Council
P.C. 1982-2607 dated the
3rd day of September 1982.

LICENCE NO. EL-145

IN THE MATTER OF an application by The New Brunswick Electric Power Commission pursuant to the provisions of the *National Energy Board Act* (hereinafter referred to as "the Act") for a licence under Part VI thereof for the exportation of interruptible energy filed with the Board under File No. 1923-4/N7-9.

WHEREAS an application dated the 19th day of November, 1980, as amended, has been made by The New Brunswick Electric Power Commission to the National Energy Board (hereinafter referred to as "the Board") under Part VI of the Act for a licence for the exportation of interruptible energy at points on the international boundary line between Canada and the United States of America;

AND WHEREAS a public hearing has been held commencing on the 24th day of November, 1981, in the City of Fredericton, in the Province of New Brunswick, at which The New Brunswick Electric Power Commission and all interested parties were heard;

AND WHEREAS the Board, having heard The New Brunswick Electric Power Commission and all interested parties, and having taken into account all such matters as to it appear to be relevant, has satisfied itself that the quantity of interruptible energy to be exported from the system of the The New Brunswick Electric Power Commission does not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada and that the price to be charged by The New Brunswick Electric Power Commission for the interruptible energy to be exported by it is just and reasonable in relation to the public interest;

NOW THEREFORE, the Board, pursuant to section 82 of the Act, and subject to the conditions hereof, hereby issues this Licence to The New Brunswick Electric Power Commission for the exportation of interruptible energy at points on the international boundary line between Canada and the United States of America.

This LICENCE is subject to the following terms and conditions:

1. The term of this licence shall commence on the 1st day of November 1982 and shall end on the 31st day of October 1990.
2. The classes of inter-utility export transfer authorized hereunder are sale, exchange and adjustment transfers of interruptible energy.
3. The energy to be exported hereunder shall be transmitted over any international power line for which a certificate of public convenience and necessity is in effect.
4. The quantity of energy that may be exported hereunder in any consecutive twelve-month period shall not exceed 179 gigawatt hours.
5. All exports of energy made by the Licensee hereunder shall be in accordance with the interconnection Agreement dated 4 August 1981 between the Licensee and Eastern Maine Electric Cooperative inc.

6. The Licensee shall not export energy hereunder
 - (a) other than energy which is surplus to the firm energy requirements of economically accessible Canadian markets at the time of its exportation, and
 - (b) without first offering such energy, including any part thereof, to economically accessible Canadian markets, on terms not less favourable to a Canadian purchaser, after any appropriate adjustments have been made for differences in the cost of delivery than the terms on which the export would be made.
7. The Licensee shall interrupt or reduce the export of energy to be exported hereunder whenever, or to whatever extent such energy is required by interconnected systems to supply firm loads within Canada.
8. The prices to be charged for the energy exported hereunder shall be not less than the prices computed in accordance with the Interconnection Agreement referred to in Condition 5.
9. When energy exported hereunder is generated by the burning of fuel oil, the incremental fuel cost used in any pricing formula shall be
 - (a) for imported fuel oil, the price paid by the Licensee to the importers plus the amount by which that price was reduced by any subsidy or compensation payment from any level of government in Canada, and
 - (b) for fuel oil made from Canadian crude, the export price of such Canadian fuel oil, including any export charge.
10. Any export which occurs at a time when oil-fired thermal plant is operating on the system of the Licensee shall be to the extent of the net output of the oil-fired plant at that time, be deemed to be an export of energy from the oil-fired plant, except in cases where the oil-fired plant has been started up for domestic needs and is kept in service purely for domestic operational reasons, or in such cases as may, upon application, be approved by the Board.
11. The Licensee shall not without the prior approval of the Board, amend, enter into any agreement in substitution for or in addition to or terminate the Interconnection Agreement referred to in Condition 5.
12. The Licensee shall, within 15 days after the end of each month comprised in the term of this licence, file with the Board a report in such form and detail as the Board may specify, setting forth for that month information pertaining to transactions under the licence.

ISSUED under Part VI of the *National Energy Board Act* in the City of Ottawa, in the Province of Ontario, this 11th day of March, 1982.

NATIONAL ENERGY BOARD

G. Yorke Slader
Secretary

Approved by Order in Council
P.C. 1982-2607 dated the
3rd day of September 1982.

Appendix III

Letter from The New Brunswick Electric Power Commission to Maritime Electric Company Limited

Dated 1983-11-07 (Options 1 and 2)

NOTE: Re-typed by the National Energy Board

THE NEW BRUNSWICK ELECTRIC POWER COMMISSION

LA COMMISSION L'ÉNERGIE ÉLECTRIQUE DU NOUVEAU-BRUNSWICK

P.O. Box 2000
Fredericton, N.B.
F3B 4X1

1983-11-07

J.H. Reynolds
Vice-President and General Manager
Maritime Electric Co. Ltd.
Charlottetown, P.E.I.
C1A 7N2

Dear Mr. Reynolds:

Further to our August 26, 1983 letter, V. Corey to P. Newcombe and your June 8, 1983 letter, N.B. Power hereby confirms that as of November 1st, 1983 it began delivery of energy to Central Maine Power (CMP), under terms and conditions of the Power Purchase Agreement dated January 21st, 1983.

In light of the CMP contract now being in effect NB Power is prepared to offer MECL the following agreement options. These options are open to MECL until Dec 31/83.

1. Agreement tied directly to CMP Power purchase agreement

An agreement under this option would result in a price for energy based on the CMP Contract. The price would be adjusted to reflect: the domesticized heavy fuel oil price, transmission losses, compensation for transmission rights, and rate of exchange.

Energy under this option would be made available at the same dispatch as Central Maine Power.

"or"

2. Agreement similar to terms and conditions of CMP Agreement

An Agreement under this option would price energy based on Maritime Electric's avoided cost. Price would be determined under terms and conditions similar to those in the Power Purchase Agreement with CMP. Under this type of agreement the parties would have the flexibility to consider changes in the CMP type agreement as they relate in M.E.C.L.'s particular needs.

In either of the above options certain clauses in the CMP agreement which refer specifically to the parties of the agreement would require changes.

The following table gives an estimate of your purchase price under option 1 for 1984. The column headed option 2 provides NB Power's expected incremental cost for the same period; these costs will enable you to evaluate the price to MECL under this option.

<u>MONTH</u>	<u>Cost of Oil (6.32 MBTU/BBL) \$CAN/BBL</u>	<u>Option 1 Price to MECL \$CAN/MWH</u>	<u>Option 2 NB Power's Prod. Cost \$CAN/MWH</u>
Nov. 83	34.65	56.17	46.36
Dec.	34.65	59.04	47.19
Jan 84	35.15	66.93	54.26
Feb.	35.15	69.63	59.60
March	34.65	61.36	51.51
Apr.	34.65	57.91	44.94
May	34.15	47.35	28.45
June	34.15	47.87	27.00
July	34.15	52.77	31.91
Aug.	34.65	56.12	36.74
Sept.	34.65	58.40	44.68
Oct.	35.15	<u>67.26</u>	<u>49.90</u>
		Ave. 58.41	Ave. 43.13

NOTES: The following assumptions have been made:

- Assumed 20 MW to MECL
- Assumed exchange \$Can = \$US x 1.23
- Losses calculated at 7.5%
- in option 1 2.40/MWH has been allowed as compensation for transmission rights secured by the CMP Power Purchase Agreement. This is a preliminary estimate of value of these rights to NB Power.

This information will enable you to readily evaluate your options and we shall await your early response.

Yours Truly,

V.E. Corey
Manager, External Marketing
and Development

VC/eso

AND WHEREAS Maritime Electric has also requested, should an offer as described above not, in the Board's opinion, be required by Condition 6(b) of the aforementioned Licences, certain amendments to the said Condition to require that such offers be made by NB Power;

AND WHEREAS NB Power has, by a cross-application dated 4 April 1984, requested, in the event that the Board should determine that Condition 6(b) of Licences EL-140, EL-143 and EL-145 requires that offers as described above be made by NB Power, certain amendments to the said Conditions;

AND WHEREAS the Board has heard the evidence and submissions of Maritime Electric, NB Power and other interested parties at a public hearing held pursuant to Board Order No. EH-4-84, which commenced on 30 July 1984;

AND WHEREAS the decisions of the Board in relation to the application and the cross-application are set out in its Reasons for Decision dated January 1985, and in this Order;

IT IS ORDERED THAT:

1. NB Power shall, within 15 days of receipt by it of this Order and the Reasons for Decision dated January 1985, offer to Maritime Electric and to every other economically accessible Canadian utility, the energy being exported to Central Maine Power Company under the Power Purchase Agreement dated 21 January 1983 and to the Bangor Hydro-Electric Company under the agreement dated 27 April 1984, and under any other term agreement for the export of interruptible energy under Licences EL-140, EL-143 and EL-145, on terms that comply with the requirements set out in Section 4.2.4 of the Reasons for Decision dated January 1985.
2. Any offer made pursuant to paragraph 1 shall state that the offeree has 15 days from the date on which the offer is received by the offeree in which to indicate to NB Power its interest in negotiating the purchase of all or part of the energy offered, and that in the absence of such a communication the offer shall be deemed to be refused.
3. That part of the application of Maritime Electric that requests an Order requiring NB Power to offer to Maritime Electric all or part of any energy that is offered for export as an economy energy transaction under any interruptible energy licence held by NB Power is dismissed.
4. The cross-application of NB Power dated 4 April 1984 is dismissed.

NATIONAL ENERGY BOARD

G. Yorke Slader,
Secretary