

New Brunswick Board of Commissioners of Public Utilities

Hearing

In the Matter of a Board Order to Review Enbridge Gas New Brunswick Inc. Financial Results at December 21, 2002 and December 2003

PUB Premises, Saint John, N.B.
December 15th 2004, 10:00 a.m.

CHAIRMAN: David C. Nicholson, Q.C.

COMMISSIONERS: Ken F. Sollows
H. Brian Tingley

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CHAIRMAN: We are back on the public session again and Mr. Ross has joined us. And, Mr. Ross, when you want to say something unfortunately our taping here is kind of restrictive and I'm sure that Board counsel, Ms. Desmond, will free up her seat and you can slip in beside Mr. Easson and say what you have to.

The Board asked Enbridge to file additional testimony and information concerning the Vanier pipe, affectionately referred to as the dead pipe issue. What would be your preference in proceeding, Mr. Hoyt, or how?

MR. HOYT: I would just ask Mr. Harrington to summarize the evidence that was submitted to get things started.

CHAIRMAN: Okay. And do you mind if we swear Mr. Harrington?

MR. HOYT: Not at all. And I would just suggest that we swear Mr. Gruttner at the same time.

CHAIRMAN: Okay.

MESSRS. HARRINGTON AND GRUTTNER, sworn:

MR. HARRINGTON: Shall I begin by summarizing, Mr. Chairman?

CHAIRMAN: Please.

MR. HARRINGTON: Mr. Chairman, Commissioners, in a letter dated on October 12th the Board indicated that Enbridge Gas New Brunswick had not adequately addressed the prudence of costs incurred in the installation of a section of pipe on the Vanier Highway. Enbridge Gas New Brunswick prepared evidence in support of its position on this matter and filed this under cover of letter on October 21st. At the same time Enbridge Gas New Brunswick filed additional supporting evidence.

As a point of clarification beginning with the notation of Mr. Easson's 2003 report and continuing, the subject section of pipe has been referred to as the removed pipe. This definition has been used by all parties subsequently including within Enbridge Gas New Brunswick's evidence.

It is important to note that this definition while convenient is inaccurate. In fact Enbridge Gas New Brunswick did not remove any pipe. The subject pipe was

abandoned in place.

Now to summarize the evidence. Enbridge Gas New Brunswick maintains that the costs incurred in installing the removed pipe were prudently incurred and that the decision taken to not pursue compensation from the government beyond the steps it did take was also prudent. EGNB maintains that it took the necessary steps to select a route in 2000 for the main feed into Fredericton. It considered the key route selection parameters amongst alternate routes and selected the route which included the removed pipeline.

Enbridge Gas New Brunswick maintains that with the receipt of knowledge regarding a potential future expansion of the Vanier Highway that the route remained the preferred route. This even with accepting the risk associated with possible future alteration.

The logical question is, why, once Enbridge Gas New Brunswick became aware of the potential future impact, did it continue to pursue this route and accept the risk associated with future potential expenses?

First, Enbridge Gas New Brunswick had reviewed the information from the Department of Transportation and determined the potential for a future impact should the expansion go ahead as planned was small.

Second, from the information that Enbridge Gas New Brunswick gathered at the time Enbridge Gas New Brunswick had little reason to believe that the highway expansion would ever take place.

Third, Enbridge Gas New Brunswick did review its alternatives and pursued its next most preferred route, a route utilizing an abandoned railway bed. Unfortunately a private company controlled access to this rail bed. After initial discussions it became plain that Enbridge Gas New Brunswick would not be able to negotiate acceptable arrangements with this party in a reasonable time frame or with acceptable terms.

Fourth, the Vanier route, risk and all, remained the preferred route. Indeed even with the benefit of hindsight Enbridge Gas New Brunswick believes the decision taken was in the ratepayer's best interest.

The prudence of the decision to not pursue the government to reclaim costs associated with the removed pipe is the next issue probed in the evidence. What needs to be understood here is that Enbridge Gas New Brunswick took this decision when it sought the permit for the installation of the removed pipeline in 2000, and while Enbridge Gas New Brunswick did request compensation in meeting with DOT officials, Enbridge Gas New Brunswick

clearly accepted the risk for such costs in the original permit application for the reasons just laid out.

The evidence goes on to explain that in Enbridge Gas New Brunswick's view to seek compensation would be in bad faith and would frustrate an already delicate relationship, a key relationship Enbridge Gas New Brunswick continues to rely on to expand its provision of distribution service and attract new distribution revenues to the system.

In this entire matter Enbridge Gas New Brunswick through its evidence has attempted to bring to mind the situation which existed at the time, the first year of Enbridge Gas New Brunswick's operations. Enbridge Gas New Brunswick believes this is important in that it was required to simultaneously manage multiple complex issues in order to get gas flowing and begin to ensure that the system would be used. Enbridge Gas New Brunswick had to forge many relationships under difficult circumstances. Enbridge Gas New Brunswick believes that as it relates to system development and expansion it was successful.

Once again, specifically related to the removed pipeline if given the chance to repeat Enbridge Gas New Brunswick would pursue the same course of action.

At this point, Enbridge Gas New Brunswick believes the

evidence submitted is complete and this panel is ready to be cross examined.

CHAIRMAN: Let me just get some things in context, okay?

MR. HARRINGTON: Certainly.

CHAIRMAN: What was the date that you came to this Board with the application for a permit to construct that portion of pipe?

MR. HARRINGTON: Just bear with me for one second.

CHAIRMAN: Yes. Sure.

MR. HARRINGTON: If you refer to our response at A-3 in the evidence, the third paragraph in.

CHAIRMAN: Sorry. The citation again? Page?

MR. HARRINGTON: It's page 2 of 7 --

CHAIRMAN: Yes.

MR. HARRINGTON: -- third paragraph at A-3.

CHAIRMAN: All right.

MR. HARRINGTON: March 15th 2000.

CHAIRMAN: And when did you put that pipe in the ground approximately?

MR. HARRINGTON: If you refer to page 4 of the evidence, the second full paragraph, in December of 2000.

CHAIRMAN: Okay. So at the time you came before this Board I -- no. Sorry. Let me just ask the follow-up question which I think is answered in the same -- the paragraph

previous. Go back up one paragraph. EGNB also had discussions with DOT concerning a highway usage permit. Although EGNB signed a highway usage permit, see exhibit F attached, it remains to our best knowledge unsigned by DOT.

So you were aware certainly before you began to instal that you had assumed the expense of relocating if necessary. Were you aware of that at the time you made the application to the Board?

MR. HARRINGTON: Just as a point of clarification, we may have been aware that there was the potential of this future expansion at the time. There was a lot of talk of that generally in the greater Fredericton area. However, we didn't know until -- and I think if you look at the bottom of page 3, the last paragraph that starts there, we did not know until November of 2000 that the Department of Transportation would only authorize the granting of a permit contingent on our accepting the risk of a future potential expansion.

CHAIRMAN: In the pipeline coordinating committee review are you aware of any time that the Department of Transportation brought this matter up?

MR. HARRINGTON: Just to be clear, we are not an invited party to the pipeline coordinating committee. We do get

invited on certain matters. Through 2000 we were not as far as I am aware, as far as Mr. Gruttner is aware, invited to participate in the pipeline coordinating committee.

My understanding is, and I stand to be corrected, subject to check, however that the parties of the pipeline coordinating committee were participants in the permit to construct application in March of that year.

CHAIRMAN: Yes. My understanding of the way in which that pipeline coordinating committee works is in fact if there are -- all the departments are served and if there are difficulties with it from the point of view of one department or the other, they may well deal directly with you the applicant and then subsequently sign off through the pipeline coordinating committee and our safety director's predecessor would have reported through to the Board and said it's clear to that committee.

And I was just wondering if in that process that leads up to that conclusion of the pipeline coordinating committee if anything to your knowledge had been said then?

MR. HARRINGTON: Not to my knowledge.

CHAIRMAN: Okay. Now you keep talking about the -- my vague, and it's terribly vague recollection of that

application, a permit to construct is that you were looking at coming up the Lincoln Road and up through the university, and then you would have to go back down the Vanier to serve the industrial park. And there was the -- what you say is your second preferred which was to come in the old rail bed.

Were there any cost comparisons done by EGNB and economically speaking how much more advantageous was it to do the Vanier rather than your second alternative which would have been the right-of-way and then the Lincoln?

MR. HARRINGTON: Just -- I will deal with all three routes in my comments here.

CHAIRMAN: Yes.

MR. HARRINGTON: The economics associated with the walking trail were never completed and the reason being we could not arrive at acceptable terms with the other party, i.e. we didn't have costs of accessing that right-of-way, and so we could never complete a costs analysis.

With regard to the Lincoln Road, we did a similar cost evaluation at the time. And there are other parameters at play as well. But to achieve the same system, i.e. being able to access the same number of customers, the same potential customers, I will give the answer both in terms of kilometres or meters of pipe and then I will provide to

you what I was able to get from our files in terms of a relative cost differential.

CHAIRMAN: Sure. Thank you.

MR. HARRINGTON: And some of these files are quite old and there is notations.

However, I did confirm the lengths.

In order to do the Lincoln Road route and provide the same level of service, i.e. coming back down the Vanier to access industrial customers and accessing the Vanier Industrial Park which isn't on the Vanier Highway, it's off of the -- Vanier Industrial Drive which comes off of Vanier Highway -- we would have required to put in 13.49 kilometres of pipe.

The actual that we installed on the Vanier, taking the route that we ended up going with was 9.45 kilometres of pipe. That's the subject piece of pipe.

CHAIRMAN: You have got a -- this is probably totally irrelevant but have you got a rough figure of how much it costs you to lay a kilometre of that size pipe?

MR. HARRINGTON: It will be rough, the approximation that I provide. A kilometre.

Approximately \$300,000. It's approximately \$300 per meter once all costs are incurred and it's installed. That can vary pretty significantly depending on the --

CHAIRMAN: Just like highways. They say it's a million

dollars a mile if you don't have a bridge.

MR. HARRINGTON: Similar. Similar.

CHAIRMAN: Yes, similar.

MR. HARRINGTON: But just to follow along with that meterage comparison, and this helps put it in my perspective. I mentioned that the Lincoln Road was 13.49 kilometres, that the piece that we actually did was 9.45 kilometres. To replace the section that we had to abandon in 2002 we installed an additional 2.2 kilometres. Just do the math.

In total we ended up putting in, with the abandonment, all in, 11.65 kilometres of pipe, less than we would have had to instal to complete the Lincoln Road route.

Now you asked for dollars. To the best of my ability I have been able to determine that all in the Lincoln Road route to provide the same level of access would have cost us in the costs that we were facing in 2000 1.7 million dollars. And that the delta between what -- how do I get this out eloquently? I'm not saying that everything else I say is eloquent.

CHAIRMAN: Commissioner Sollows is here. You had better not try that.

MR. HARRINGTON: All in with the replacement that we did, we still come out ahead as compared to the Lincoln Road by approximately \$400,000.

CHAIRMAN: To the best of your knowledge did you at anytime inform the Board that this document had to be signed with the Department of Transportation, that you would bear your own costs if the pipe had to be moved?

MR. HARRINGTON: To the best of my knowledge, no, we did not inform the Board.

MR. SOLLOWS: May I? Thank you. The rail bed route, how many kilometers was it?

MR. HARRINGTON: I might have to check with my colleague here.

MR. SOLLOWS: I understand detailed costing was not available. But we do have the 300,000 per kilometer.

MR. HARRINGTON: Right.

CHAIRMAN: That runs down by the Lincoln Road --

MR. SOLLOWS: More or less, yes.

CHAIRMAN: The experimental farm and up that --

MR. HARRINGTON: There is a map provided as one of the exhibits, if that is helpful.

MR. GRUTTNER: Mr. Sollows, if I could refer you to exhibit B, page 1 of 2. That is the --

CHAIRMAN: Exhibit which, sorry?

MR. SOLLOWS: D.

MR. GRUTTNER: Exhibit B.

MR. SOLLOWS: B?

CHAIRMAN: B as in baby?

MR. GRUTTNER: Yes. Page 1 of 2. It is a drawing done by Dillon Consulting, Enbridge Gas New Brunswick. And it shows the Trans-Canada Trail, former railway --

MR. SOLLOWS: Yes.

MR. GRUTTNER: -- just north of the Vanier Highway route. So the difference in length is pretty much the same. It is a little bit shorter. And it is the turn on Vanier Industrial coming up to Vanier Highway. That is the -- so we are looking at 100 -- 150 meters shorter.

MR. SOLLOWS: So the route would be pretty much the same. The cost would presumably be a little less, since you wouldn't have to resurface. It is a gravel bed.

MR. GRUTTNER: For construction costs, yes.

MR. SOLLOWS: Yes.

MR. GRUTTNER: But then the --

MR. SOLLOWS: But you couldn't get the land anyway, so --

MR. HARRINGTON: Just to be clear, on the Vanier route we didn't go in the paved portion of the road.

MR. SOLLOWS: Oh, I see.

MR. HARRINGTON: We were far off the -- so there was no asphalt cost.

MR. SOLLOWS: I guess the other -- or another question that I have is I see on page 3 of 7 of your evidence A-4,

halfway down the paragraph -- well, the paragraph indicates that you had preliminary plans, exhibit D attached.

Very quickly, if you can tell me, what were they dated? I'm just looking for it here. And I don't see a date on the drawing itself. Is it fair to say they were 2002 or no?

MR. HARRINGTON: To be clear, if you refer to A-4 --

MR. SOLLOWS: Yes.

MR. HARRINGTON: -- I believe we received this plan, this drawing in 2000.

MR. SOLLOWS: Okay. The revision was 2000 subject to revision plan?

MR. HARRINGTON: Correct. This was the preliminary plan.

MR. SOLLOWS: Right.

MR. HARRINGTON: And this was the extent of the data that was provided to us.

MR. SOLLOWS: Right.

MR. HARRINGTON: And we did work with the Department of Transportation to make sure that from a location perspective that their future expansion plans would not impact the existing price --

MR. SOLLOWS: That is where your comment, the alignment of the proposed highway, was not a concern even after DOT

proceeded to final design?

MR. HARRINGTON: Correct.

MR. SOLLOWS: Do we have final design plans where they are not stamped subject to revision?

MR. HARRINGTON: We do have -- we didn't file it as part of this evidence. We did --

MR. SOLLOWS: When were they available?

MR. HARRINGTON: -- in 2002.

MR. SOLLOWS: And those 2002 plans though were later revised to change the elevation?

MR. HARRINGTON: The final plans indicated the elevation. There were detailed construction drawings that -- and subject to check with Mr. Gruttner here -- that we did not have access to until 2003, which specifically laid out the cutting and filling that would take place associated with that.

MR. SOLLOWS: I see. Okay. So while the 2002 final design plan might have had the elevation information, it is a little bit obscure.

MR. HARRINGTON: Correct.

MR. SOLLOWS: So from that you would not have been able to tell easily or obviously that it was going to interfere with your line?

MR. HARRINGTON: Correct. And in fact -- and I may be a bit

hazy on this. So again I will ask Mr. Gruttner to clear things up if I'm off. We considered many alternatives in terms of how we would address the construction activity of the Department of Transportation.

And it is certainly never our preference to abandon a section of pipe, especially one so new. We can lower pipelines to a certain extent, you know, until we are stressing the pipe beyond certain limits that are prescribed in code.

We did -- and Enbridge has some significant history in doing those sorts of operations. We did evaluate that even when we did become more aware of their detailed cutting and filling operations. And unfortunately by the time we evaluated that it did not make any economic sense to take that approach.

MR. SOLLWS: And it would have then -- I assume by inference it would have been quite possible if you had been made aware of the potential need to change grades and elevations early on, you could have simply buried the line deeper and not had a problem right at the get-go and saved everybody money?

MR. HARRINGTON: That is correct. And what is important to understand with picking elevations, if we have no reason to expect issues from an operations, from a safety

perspective, going extra deep is not a preferred --

MR. SOLLOWS: It costs money, yes.

MR. HARRINGTON: Well -- and operationally it becomes more of a challenge down the road in terms of taking care of the pipe or accessing the pipe for provision of service --

MR. SOLLOWS: Yes.

MR. HARRINGTON: -- et cetera.

MR. SOLLOWS: No. I think that is it for me. Thank you.

MR. TINGLEY: Well, just for a little bit of clarification for myself, first of all you went ahead in 2002. And that is when the pipeline was constructed, in 2002?

MR. HARRINGTON: No. The pipeline was constructed --

MR. TINGLEY: Or 2000?

MR. HARRINGTON: -- in 2000. That is correct.

MR. TINGLEY: Late 2000 it was constructed.

MR. HARRINGTON: That is correct. We became aware of DOT's commitment to expand the highway in 2002.

MR. TINGLEY: But somebody must have known that something was going to happen with the Vanier Highway long before 2002?

MR. HARRINGTON: There was speculation --

MR. TINGLEY: Speculation.

MR. HARRINGTON: -- long in advance of Enbridge Gas New Brunswick even commencing operations --

MR. TINGLEY: That is right.

MR. HARRINGTON: -- within the province as we understand.

MR. TINGLEY: Oh, yes.

MR. HARRINGTON: And it was quite the desire of the City of Fredericton to expand -- to have that highway expanded. Our understanding is -- and we often consult with our investors, and in earlier days our joint venture partners, who have good knowledge of local matters, that this has been a dream of the greater Fredericton area for a very long, long time.

However, most of them anticipated that it would never actually come to pass.

Such is life.

MR. TINGLEY: But there must have been some suspicion that it probably could happen?

MR. HARRINGTON: I think that might be taking it to the next step. I think we knew that this was something that was desired.

We knew that it was something that the political forces had tried to attract funds to in the past and had not been successful. We knew that the plans stood. However, we did not have any specific knowledge that it was likely.

MR. TINGLEY: Yes. No commitments on anybody's part is what you are saying --

MR. HARRINGTON: Correct.

MR. TINGLEY: -- to you --

MR. HARRINGTON: Correct.

MR. TINGLEY: -- that something was going in sometime within the next certain period of time?

So basically you took a business decision and said well, we want to get gas in there and this is the way we are going to go?

MR. HARRINGTON: Well -- and we did --

MR. TINGLEY: Simplifying things.

MR. HARRINGTON: We looked at -- well, for two major reasons we thought that the risk was minimal. One is one that you have already touched on, which is we didn't believe that it was likely that this plan would proceed to expand the highway.

Second is we had worked with the Department of Transportation to pick an alignment that, from the information that was made available to us at the time, indicated that even if the expansion did go ahead, it wouldn't impact the position of the pipeline.

And it was in that that we found out subsequently in 2002 and 2003 that the profile changes that were being proposed in the specific design were going to impact our buried facilities.

MR. TINGLEY: Okay. Thank you.

CHAIRMAN: I'm looking at exhibit D, page 1 of 5, which is I guess the first plan that you had on Route 7. And if you can just turn to that for a second. And I'm speaking from a foggy memory of my own.

But do you recollect when the lane that you will see proceeding in what would be an easterly direction, and it proceeds out and joins up with the Trans-Canada, when that was constructed?

There was a long period of time on that stretch from the Fredericton Co-op down through that you were on a two-lane highway. And for instance the Vanier Industrial Drive was still there and that sort of thing.

Do you recollect when that was constructed? Because then there was not that big a hunk that needed to be twinned.

MR. HARRINGTON: The section beyond the Vanier Industrial, is that --

CHAIRMAN: Yes.

MR. HARRINGTON: So south of the --

CHAIRMAN: Yes. Anyway that is not a terribly fair question. But I'm just thinking, that has been completed for quite some considerable length of time.

MR. HARRINGTON: It is -- as far as I'm aware it was pre

1997 I would say.

CHAIRMAN: Yes. So would I. Okay. Let me ask you this. In all the construction that you have done since EGNB started to construct in the province of New Brunswick have you had to sign an agreement similar to the one that you had to sign vis-a-vis the route along the Vanier?

In other words is this a blanket common occurrence from the Department of Transportation to get you to sign one of these or not?

MR. HARRINGTON: I'm looking --

CHAIRMAN: Check with Mr. Hoyt.

MR. HARRINGTON: I may be expanding my understanding of the question, but I think the Board is aware that we are into municipal operating agreements with the various municipalities, and those have provisions within them that can require -- if a municipality so desires and they reach certain conditions they can require us to realign, remove, replace pipelines.

MR. HOYT: With compensation provisions built in.

MR. HARRINGTON: Similarly the Department of Transportation has their highway usage permit agreements which have similar requirements, you know, if they require us to remove a pipeline, compensation provisions, et cetera.

CHAIRMAN: In other words you will be compensated --

MR. HARRINGTON: Yes.

CHAIRMAN: -- for that removal that you would have to make.

MR. HARRINGTON: In terms of a specific exception I'm only aware -- and, you know, it would be subject to check -- I'm only aware of one other specific exception and that is with regard to --

CHAIRMAN: The causeway.

MR. HARRINGTON: Well the causeway we never did get much -- we got a permit that wasn't all that useful because it wouldn't allow us to join the pipes. But is the Marco Polo --

CHAIRMAN: They can do it a number of different ways, can't they?

MR. HARRINGTON: The Marco Polo bridge here in Saint John -- and I am a bit hazy -- but I think there was some specific requirements that if they were doing work on the pipe -- on the bridge -- that they could require us to -- and the provisions -- they could require us to temporarily remove it while they did their work and we would have provisions to allow us to temporarily provide service in another fashion. A little different circumstance but --

MR. SOLLOWS: With or without compensation?

MR. HARRINGTON: In that case it would be -- we would be paying to provide the temporary interconnection and the

cost to replace the facility subsequent.

MR. TINGLEY: The land that you constructed your pipeline on in 2000, was that property owned by the Department of Transportation or the City of Fredericton?

MR. HARRINGTON: I'm not a land titles person, but my simple understanding is that it's owned by the Department of Transportation. They have control over those lands. You know, if Len wants to give a more specific answer, but I think that's the helpful answer.

MR. HOYT: We have never done any kind of title check, but it was the DOT that expropriated it, so I assume it was -- well it's certainly theirs now.

MR. HARRINGTON: In 2000 when we constructed the pipeline that was their controlled right-of-way. They are issuing a permit over it. They are the ones who have the control over those underground.

MR. HOYT: But they did have to expropriate a number of pieces of property to acquire the additional land.

CHAIRMAN: Yes.

MR. HOYT: So in 2000 they likely didn't own various portions of it.

MR. HARRINGTON: But I think the question was where we put the pipe in 2000 was that land that was controlled by the Department of Transportation. The answer to that question

is yes.

CHAIRMAN: All right. Those are all the questions of the Board at this time. Mr. Ross, do you have questions of this panel?

MR. ROSS: No.

CHAIRMAN: No? Okay.

MR. ROSS: Of those witnesses?

CHAIRMAN: Yes.

MR. ROSS: No.

CHAIRMAN: No. Okay.

MR. HARRINGTON: I believe Mr. Sollows was putting up his finger.

CHAIRMAN: I was trying to ignore him.

MR. HARRINGTON: Sorry.

CHAIRMAN: I didn't ignore it.

MR. SOLLOWS: You weren't sufficiently studious. I have been just looking at tab H which is the notice to expropriate, and quickly glancing through it I don't see any reference -- now this was done under the Expropriations Act which may be for your lawyer rather than you --

MR. HARRINGTON: I'm getting that sense.

MR. SOLLOWS: There doesn't seem to be any indication here of the reliance on the undertaking that you gave. Is that

normal practice that there would not be expropriation without compensation?

MR. HOYT: I think the way that it works is -- I will just refer you to subsection 37.1 of the Expropriation Act --

CHAIRMAN: I just happen to have that back here.

MR. HOYT: If an agreement hasn't been reached between the owner and the expropriating authority regarding compensation, then the authority, or DOT in this case, has 90 days from the time that the notice of expropriation is registered to serve on the owner an offer of compensation. So there is always an attempt to reach an agreement first. In this case DOT's position would likely have been -- and I wasn't involved in it, but would likely have been that there was an agreement. It's the December 2nd letter. So that they would say that they would not have had to go to the next step of within 90 days of that notice of expropriation making an offer to Enbridge or any of the other owners.

MR. SOLLOWS: But you did enter into preliminary negotiations and for reasons relating to the relationship in other places and pressures of time you decided to make your own assessment that you weren't going to have much luck with it and carry on.

MR. HOYT: Well I believe in 2000 we took the decision, if

the expansion of the highway was going to take place we looked at the risk associated with it. We evaluated that and we determined that that risk was minimal, we were ready to go ahead. In 2002 when -- and it was me who made the specific ask of the Department of Transportation in a meeting -- they were very quick to indicate to us, no, we had a prior agreement and we are not willing to entertain any compensation associated with this. They were being very flexible in terms of working with us to coordinate these operations.

And I think, you know, the area you are going into is one of corporate personality and honour. Enbridge Gas New Brunswick did make a prior commitment. I took the one feeble -- it wasn't that feeble -- one attempt to try to see if we could get this compensation issue back on the table and we were unsuccessful.

MR. SOLLOWS: That's fine. Thank you very much.

MR. HOYT: Just for a correction on the record, I had said December 2nd letter. It's the November 2nd letter that's exhibit E.

CHAIRMAN: Staff has no questions. I want to thank you for your testimony. And this is my comment and my comment only, is that the last four years have been a learning process for all of us and I think that the Board would

appreciate upon your first knowledge of something that may affect the ratepayer in the future that we be informed of same.

I also believe and I will speak with staff involved that there could well be a gap in the pipeline review process as well that frankly I find rather disturbing because that's why the Act calls for all these various ministries to be served. And if there is -- where I come from if there is a possibility that something could affect the expenditures which you are going to make and ultimately the ratepayers, then I think that's when the red flag should be raised. But anyway, again thank you, gentlemen.

MR. HARRINGTON: Thank you.

CHAIRMAN: Now, Mr. Ross, why don't you grab a microphone and so I can just understand what it is that --

MR. EASSON: Mr. Ross can sit here.

CHAIRMAN: All right. Just a second. Mr. Easson will move and you can take his chair.

MR. ROSS: Thank you.

CHAIRMAN: Mr. Ross, what role did you wish to play in the proceeding? What is it that you would like to do?

MR. ROSS: Thank you, Mr. Chairman. The association when it had taken note of the Board's correspondence to Enbridge

regarding the Vanier Highway issue had approached staff here regarding this, you know, in trying to determine the proper way to proceed. In hindsight we didn't get it right and the association had been made aware from one of its members of some documentation that was pertinent to the construction of the Vanier Highway pipeline. And so just in -- with the desire I guess to offer whatever documents it had to the Board that that bore on this issue of the Vanier Highway and it's construction costs, we wanted to make those documents available to the Board if the Board wish to have them available.

CHAIRMAN: What I am hearing causes me to make a suggestion. Why don't we take a break and speak with Ms. Desmond, Board counsel to your right, and show to her the documents that you are talking about, and to the best of knowledge none of us have reviewed them, except you weren't here when they were sent in and somebody has to present them in light of the fact of what it is we are attempting to achieve here. If those documents will shed any light on the subject matter we have been talking about from the point of view as to whether or not the decision that EGNB took at the time was prudent, then we will be glad to talk about it after the break is over. And I appreciate you are new to the Board's procedure and process. We

appreciate your patience over the last two days. So you take whatever time is necessary.

(Recess - 11:45 a.m. to 12:05 p.m.)

CHAIRMAN: Okay. Mr. Ross, you have had an opportunity to talk with Board counsel about things that you might like to do. Would you like to tell us how you want to proceed?

MR. ROSS: Yes. Thank you, Mr. Chairman. The Association had, as mentioned previously, been provided with some information. And it was because of the Association's receipt of the Board's correspondence regarding the Vanier Highway Pipeline issue, the Association was aware that it had information, and let's call it other source information I guess, regarding the Vanier Highway Pipeline and the timing of the permitting process and the timing of the construction work, that the Association had this information.

It is willing to provide this corroborating information regarding the delays in the permitting process and the actual construction start and completion to the Board for information purposes if the Board is willing to receive it and if it is appropriate to be received.

CHAIRMAN: Mr. Hoyt?

MR. HOYT: Just on that point, I have had a chance to go through the various material.

And there are two -- they

are individual pages of correspondence for the most part.

There are two pieces in particular that we don't have an objection to. And in fact they just confirm the time lines that Enbridge has put forward in its evidence.

We have very serious concerns with the remainder. They deal -- they are much more relevant to the ongoing litigation between EGNB and a number of the members of the Association, don't deal specifically with the Vanier Highway and are troublesome for us to end up on a public record in a proceeding that essentially is to determine whether decisions made by EGNB were prudent, not who Enbridge used to do this work or that type of thing.

So as I said, with respect to two of them, no problem. The rest of it very serious objections.

CHAIRMAN: Thank you, Mr. Hoyt. Mr. Ross, you have heard what Mr. Hoyt had to say.

And of course I have not had an opportunity in looking at them. And certainly you are familiar with which two Mr. Hoyt said is no problem.

And certainly from our perspective, our interest in the relevancy of documentation in reference to -- again I call it the dead pipe issue -- has to do with timing, together with -- that is timing, as you were in the room when I questioned Mr. Harrington about the time sequence that things happened.

MR. ROSS: Yes.

CHAIRMAN: And whether or not Enbridge Gas New Brunswick was being prudent in making the decision to choose the route that it chose rather than one of the alternatives. And so that is at the basis of what it is that has come before the Board today.

So you are perfectly -- well, I encourage you to present the Board with the two pages that Mr. Hoyt has talked about and then take a look at it, and again with Ms. Desmond's assistance see if there is anything else that is relevant to what -- or you believe is relevant to what I have attempted to outline as being our problem.

And if you want to try and introduce it then we will provide a copy to Mr. Hoyt. And we can argue about each individual document. Simple as that.

So if you would like to present us with the two documents that you know Mr. Hoyt has no objection to, I will go from there.

MR. HOYT: Those are the ones marked F and G.

CHAIRMAN: Do you want some copies made of that?

MS. DESMOND: If I could just comment. Mr. Ross was not sure if the Board had copies of the documentation that had been sent?

CHAIRMAN: Well, I think we had better make some copies.

Because our approach was at the time, Mr. Ross, and you can understand that, when you simply sent them by mail. And I certainly personally didn't read them and probably just discarded it because you couldn't show up or whatever.

So maybe, Mr. Goss, could you take -- or Mr. Lawton, just take them out and have some copies made. Probably about 10 copies would do it.

Now we will retire so you can talk to Ms. Desmond. And we will leave the door open. Let us know when

Mr. Lawton is back. Then we will carry on.

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

CHAIRMAN: Mr. Ross, I have in front of me a two-page document which is made up of a letter from Mr. Gruttner to Robinson Construction dated October 26th 2000, is the first page. And the second is from again Mr. Gruttner to Robinson Construction dated November 28th 2000. And, Mr. Hoyt, you have no problem with that being made an exhibit?

MR. HOYT: No. I would like to make a comment on it though.

CHAIRMAN: Certainly. No problem. It will be exhibit M-1 from Maritime Pipeline Contractors Association. Okay.

All right. Do you want to tell me what the import of those two documents is, Mr. Ross?

MR. ROSS: Yes, Mr. Chairman. The purpose in providing

these documents is merely to confirm to the Board the time frames associated with when approval to proceed with construction was actually given to the contracting company.

CHAIRMAN: Okay.

MR. ROSS: That is it.

CHAIRMAN: That is fine. Anything else?

MR. ROSS: Not regarding these two.

CHAIRMAN: No, no.

MS. DESMOND: I can advise the Board that the documents

Mr. Ross had initially asked be submitted, I believe there are three now that he has decided would not be relevant to the matter before the Board, but would still ask that B, D and E be considered. And I think his intent is to provide those and make arguments as to their relevance.

CHAIRMAN: Yes. B, D and E?

MR. ROSS: Correct.

CHAIRMAN: Okay. Would you like to talk about B and why it is relevant?

MR. ROSS: Document B is a work schedule for the Fredericton project dated July 19th.

And it shows the -- at July 19th of 2000 it shows an anticipated 13-week completion timeline for doing the Fredericton work, which included in this case the Fredericton Vanier Highway work. The reason

for -- and this is dated July 19th. Item E is the same schedule --

CHAIRMAN: I think what I would like to do is to take each separate document and hear what Mr. Hoyt has to say. So this is with -- that was D you were referring to?

MR. ROSS: No. B.

CHAIRMAN: B as in baby?

MR. ROSS: B as in baby.

CHAIRMAN: Okay. Mr. Hoyt?

MR. HOYT: A couple of comments. The work schedule actually at the top of it indicates that it is for Moncton number 1, Moncton number 2, Fredericton number 4, Oromocto number 5, you know.

I don't know what those necessarily relate to. But I think one of the important things that Mr. Ross mentioned is this was just an anticipated schedule that was put out at some particular time.

I think it goes to -- I think where it is headed, it relates to a potential delay claim that is the subject of litigation between the members of the Association and Enbridge Gas New Brunswick.

Again I fail to see the relevance to this proceeding.

CHAIRMAN: I appreciate the effort, Mr. Ross, but we don't see the relevance to the questions that we are dealing

with. Okay. So the next one was --

MR. ROSS: The next one I guess that would probably fall into the same category I would prefer to deal with E first, it's an updated copy of that work schedule. It's revised dated October 17th. I would point out that although Mr. Hoyt read down through the four contracts, the phrase, this one does apply to the Fredericton sheet which is what this work schedule is.

CHAIRMAN: Again, I don't -- I'm not even going to bother asking Mr. Hoyt because the dates that we are interested in is not when construction was started or delayed or anything of that nature. It simply was when did we give approval to the construction, when did it become -- when did Enbridge Gas New Brunswick become aware of the fact that there was this agreement signed and that they had to sign before they could proceed. We have gone through all of that. Okay. So your last document?

MR. ROSS: The last one was item D. And I guess further to the Board's comments, this one was an early document dated August 22nd and just -- all it did was it just confirmed that the permitting status of the Vanier Highway from the Department of Transportation was blank at that point in time. So I guess in hindsight now without these other documents to support it it doesn't stand on its own.

CHAIRMAN: Good. All right. Anything else you want to offer to the Board?

MR. ROSS: No, Mr. Chairman. That's it. Just for purposes of providing information to the Board that we had. That's all.

CHAIRMAN: Good. Well my fellow Commissioners and I want to thank you for your patience over the last two days and it certainly is -- it's pretty obvious to us that you are trying to play a role and you are trying to do it in a proper fashion. And that's appreciated.

MR. ROSS: Thank you.

CHAIRMAN: Yes, Mr. Hoyt.

MR. HOYT: Now can I make my comment on F and G?

CHAIRMAN: Yes.

MR. HOYT: Just to explain my understanding I said earlier that --

CHAIRMAN: You mean exhibit M-1.

MR. HOYT: Exhibit M-1. Sorry.

CHAIRMAN: Right.

MR. HOYT: My comment earlier that it in effect confirms the time lines that Mr.

Harrington described earlier, the first letter, the one dated October 26th was Enbridge giving Robinson the approval to proceed with three portions of the Vanier Highway. But I'm told by Mr.

Gruttner that none of those three are actually the piece where the dead pipe was located. And that's because on October 26th the letter dated November 2nd obviously hadn't been sent to DOT confirming they were prepared to bear the expense.

That letter -- the document that would fit in the middle of this would be the November 2nd letter to DOT confirming that EGNB recognized the risk. That then allowed DOT to start doing what they had to do to in effect say, okay. So sometime between November 2nd and November 28th they gave their approval for Enbridge to put the pipe in the ground. On November 28th Mr. Gruttner signed a letter to Robinson and said, you can now complete the particular dead pipe piece. So that's how they fit and I think Mr. Ross agrees.

CHAIRMAN: Good. Thank you. Okay. And we will give Mr. Ross an opportunity to gather up because I would like -- I think we might as well conclude this before lunch. So if you would like to gather your things up because Mr. Easson may or may not wish to say something as to whether we go by oral or written or whatever else.

MR. ROSS: Mr. Chairman, just one final comment from --

CHAIRMAN: Yes. Sorry.

MR. ROSS: -- the Association regarding the capital -- not

the capitalization per se but the categorization of deferred expenses as property, plant or equipment, I think it's fair to say that the Association shares Mr. Easson's concerns that deferred expenses be properly categorized and characterized. And so we just wanted to note that for the record. And to thank the Board for having us.

CHAIRMAN: Thank you again. The calendar will be coming.

MR. HOYT: Just because I assume you are going to go right to the AFUDC in the argument, in terms of the argument with respect to the Vanier, I'm just wondering whether there is anything required on that. I mean, that's an argument I could make any time probably. I mean, I would need some time -- a little bit of time, but does the Board require anything more on that or not?

CHAIRMAN: It has to be your choice. You know, I think the evidence that has been brought has explained the circumstances quite thoroughly. I don't see a great need in you going into a great deal of work as to definition of what is prudent and used and useful and that sort of thing. So -- but I don't want to cut off anything you want to do, Mr. Hoyt.

MR. HOYT: As I said, if it's my option I will never take the option of not making the submission.

CHAIRMAN: It's our lifeblood, isn't it?

MR. HOYT: Unless you tell me that you have accepted it. So I would be inclined to make the submission but if the Board wanted to be rid of that portion of the proceeding today, I would expect over lunch I could finalize it and come back. Some of the issues -- some of the research and so on around prudence has been done and I don't mind sharing that. I mean, it may make sense to do that today. It won't -- I mean 15, 20 minutes probably.

CHAIRMAN: Why don't you think about it over lunch and we will reconvene and you will have an opportunity to address the Board on that. There is no need to address the Board in reference to the study which EGNB is going to do through the consultant and file it. That's looked after, as I recollect it. So the only outstanding question will be the AFUDC question. And Mr. Ross has agreed he is not interested in that, so that it would just simply be you, Mr. Hoyt, giving us your argument on that, whether it's in written or oral form.

And so I suggest that we break for lunch now and come back and we can deal with the timing et cetera on those two matters, or on the AFUDC matter, and you can make your brief argument on the prudency matter, the dead pipe.

MR. HOYT: The dead pipe. We will change the title.

CHAIRMAN: So why don't we try to come back at 2:00 o'clock,

then.

(Recess - 12:35 p.m. - 2:00 p.m.)

CHAIRMAN: Back on the record, let's hear an argument about the dead pipe, sir.

MR. HOYT: In Jim Easson's review of EGNB's regulatory financial information for 2003 he raised a concern as to the manner in which EGNB had accounted for the removal of pipe along the Vanier Highway in Fredericton.

He relied on the fact that the pipe in question could no longer be considered to be used and useful, and concluded that this item should be removed from rate base for regulatory purposes.

Mr. Easson took no issue with the prudence of the costs associated with the installation of the removed pipeline. No intervenor has presented evidence that EGNB's decisions were imprudent.

However on oral argument day, on September 30th, the Board asked a few questions concerning the Vanier Highway Pipeline. Then by letter dated October 12th the Board indicated that it has two issues associated with the costs involved with the Vanier Highway Pipeline.

The first one is how it should be recorded on EGNB's books. The Board indicated in its October 12th letter that, and I will quote, "Based on the discussions to date,

if the cost is found to be prudent, it should be treated as an extraordinary event and written off as a loss. This would then increase the amount of the deferral account. EGNB would ask the Board to confirm that since no discussion on that issue took place in today's proceeding, so long as the costs are found to be prudent, that is the accounting treatment that will be used in relation to the Vanier Highway Pipeline."

The second issue identified by the Board is the prudence of the costs incurred. Through its submission dated October 21st, Enbridge has described the circumstances surrounding the original installation and removal of the Vanier Highway Pipeline.

A permit to construct had been issued by the Board in June 2000. The Province failed to enact the often-promised standard construction regulation. Lengthy negotiations with the seven municipalities then took place during July and August, leaving EGNB well behind schedule.

In late summer 2000 EGNB finally began building the infrastructure that would form the backbone for gas distribution in Fredericton and six other municipalities in New Brunswick.

Permits were difficult to obtain from the municipalities and provincial officials. Authorities in

New Brunswick were not at all familiar with natural gas and were proceeding slowly.

As for the Vanier Highway, EGNB had selected it as its preferred route based on a number of established factors. In discussions with DOT to obtain the necessary permit to construct along the Vanier Highway in late summer 2000, EGNB was provided with copies of preliminary plans to expand the Vanier Highway.

Based on those plans, which were subject to revision, EGNB was convinced that the pipeline in question could have remained in place had the construction proceeded in the manner shown on the preliminary plans.

Unfortunately, in the final design stage, the elevation of the road changed and the pipeline had to be removed. The Vanier Highway expansion was far from a done deal. In 2000 no funding had been approved. And DOT itself informed interested business owners in November 2000 that there was no sign of funding.

EGNB's information was that DOT and the City of Fredericton had been talking about expanding the Vanier Highway for years.

The pressure on EGNB to complete the pipeline and interconnect M&NP to other downstream EGNB facilities, including some large potential customers, was intense.

And although EGNB, upon learning of the possible expansion of the Vanier, explored other alternatives, namely the Lincoln Road and the walking trail owned by J.D. Irving, those alternatives were not feasible.

However, before being allowed to proceed on the Vanier, DOT required EGNB to provide it with a letter that a future relocation of EGNB's pipeline, as a result of the proposed realignment of the Vanier Highway, would be at EGNB's expense.

Why didn't EGNB seek compensation from DOT when it was advised it had to remove its pipeline two years later?

EGNB, as Mr. Harrington explained this morning, had agreed that in such a case, the removal would be at its expense. That agreement had been necessary to allow EGNB to construct the pipeline in the first place.

Notwithstanding that agreement, EGNB did have discussions with DOT and requested compensation. DOT refused. Based on the agreement it had made with DOT, EGNB determined that it was not in a position to seek compensation from DOT through any of the vehicles, including expropriation, that might otherwise have been available.

I would like to turn to the prudence question. Were the costs incurred by EGNB prudent? I submit that they

were. Prudent serves as a standard of care in effect for utility's management in making decisions giving rise to costs that the utility seeks to recover in rates.

The prudent standard does not require that a utility's management make the best decision however, but only that they make a reasonable one. These decisions must be judged as to their reasonableness at the time they were made and not after the fact based on hindsight, considering that management must solve problems prospectively. If this were not the case, management would be held to a standard of perfection rather than prudence.

The prudence standard emanates from Mr. Justice Brandeis' opinion in a case decided by the Supreme Court of the United States in 1923. And I'm going to refer to four cases. And I know that the Board's preference is to seek complete copies, which I have and will distribute following my submission.

The first tab in that submission is a case called the State of Missouri, Southwestern Bell Telephone Co. v. Public Service Commission of Missouri.

And it subsequently became entrenched in American jurisprudence, particularly in cases involving public utilities and as now applied by utility regulators across

Canada as well as in the United States.

Mr. Justice Brandeis, which actually was a dissenting opinion, or a dissenting opinion in the judgment, held that a public utility should not be prevented from earning a fair return on the amount prudently invested in it, that is invested in the capital assets comprising its rate base. He explained the concept of prudent investment in the following terms at page 289.

"The term 'prudent investment' is not used in a critical sense. There should not be excluded from the finding of the rate base investments which under ordinary circumstances would be deemed reasonable. The term is applied for the purpose of excluding what might be found to be dishonest or obviously wasteful or imprudent expenditures. Every investment may be assumed to have been made in the exercise of reasonable judgment unless the contrary is shown." And that is the end of the Brandeis quote.

Mr. Justice Brandeis' assumption of reasonable judgment, unless the contrary is shown, is now known as the presumption of prudence. A utility management's decision to incur costs are presumed to be prudent. And thus such costs are presumed to be prudently incurred unless the presumption is rebutted by another party. The

other party must do so by adducing evidence or otherwise casting serious doubt on the decision in question. And that principle comes from the second case in the --

CHAIRMAN: That is your paraphrasing of that?

MR. HOYT: Yes. That --

CHAIRMAN: Okay.

MR. HOYT: Yes. That is my paraphrasing it. And it comes from a case, Indiana Michigan Power Company which is at tab 2 of the cases.

CHAIRMAN: Because I just interrupt there, Mr. Hoyt. If the utility itself, subsequent to that decision, brings evidence that will lead the regulator to realize a situation, then I don't think an intervenor has to necessarily present that evidence.

MR. HOYT: That is -- I'm going --

CHAIRMAN: Pardon?

MR. HOYT: I'm going to get to the --

CHAIRMAN: All right. Okay.

MR. HOYT: -- ability of the Board. It is not enough, in other words, to merely allege imprudence. A regulator has the option however of requiring a utility to demonstrate the prudence of a particular decision and thus the consequential costs. The Board has exercised this option in this proceeding.

The FERC is the utility regulator in the United States. Its ratemaking authority is similar to the Board's, namely rates must be just and reasonable. The FERC has summarized the prudent standard as follows in a case which is at tab 3 of the New England Power Company.

And what it said, and I quote, "Managers of the utility have broad discretion in conducting their business affairs and in incurring costs necessary to provide services to their customers. In performing our duty to determine the prudence of specific costs, the appropriate test to be used is whether they are costs which a reasonable utility management or that of another jurisdictional entity would have made in good faith under the same circumstances and at the relevant point in time. We note that while in hindsight it may be clear that a management decision was wrong, our task is to review the prudence of the utility's actions and the costs resulting therefrom based on the particular circumstances existing either at the time the challenge costs were actually incurred or the time the utility became committed to incur those expenses."

And the fourth case, it was a Court of Appeal decision in *Violet v. FERC*. And it affirmed the FERC's decision, Opinion No. 231, in the following passage.

And I quote, "The Commission in exercise of its power to advise methods of regulation capable of equitably reconciling diverse and conflicting interests has applied the prudence test to determine the recoverability of a utility's expenses. Under this test New England Power is entitled to recover its cost from consumers if it acted prudently in incurring those costs. Or stated conversely, New England Power may not recover its costs if those costs were incurred imprudently. That New England Power invested in a plant that did not become operational does not by itself make its investment imprudent. In an industry that combines long lead times for plant construction with wide fluctuations in supply and demand, constant changes in the regulatory environment and unpredictability in the availability and price of alternative sources of fuel, some projects that may seem prudent at the time that costs are incurred some years later in hindsight may appear to have been unnecessary or inadvisable. The prudence of the investment must be judged by what a utility's management knew or could have known at the time the costs were incurred.

And the FERC has more recently stated, again in the tab 2 case, Indiana Michigan Power Company case, that the "Prudent standard is based on the principle that the

Commission should not, using the benefit of hindsight, replace the business decisions of a utility with its own."

So the following is a summary of the prudent standard. Decisions made the utility's management should generally be presumed to be prudent unless they are challenged on reasonable grounds, or as here the regulator requires the utility to demonstrate prudence.

Secondly, to be prudent, a decision must have been reasonable under the circumstances that were known or ought to have been known the utility's management at the time the decision was made.

Third, hindsight must not be used in determining the prudence of a decision. Hindsight includes in particular the use of outcome to evaluate the decision.

And fourthly, prudence must be determined in a retrospective factual inquiry. The evidence must be concerned with the time the decision was made and must include facts and not merely opinion about the elements that could or did enter into the decision at the time.

With respect to this particular instance involving EGNB, it is our opinion that (1) the decisions taken by EGNB's management in late 2000 in relation to EGNB's pipeline along the Vanier Highway, including the removed pipeline, were prudent because they were reasonable under

the circumstances that were known by management at the time management took the decisions. The decisions comprise not only the installation of the pipeline, including the removed pipeline, but also the prior acceptance of the cost risk of a future relocation of it.

Secondly, EGNB's costs of installing its pipeline along the Vanier Highway, including the removed pipeline, are accordingly costs that were prudently incurred by EGNB. And those costs as a consequence are recoverable by EGNB.

Thirdly, the decision taken by EGNB's management in the spring of 2002 to take no further steps in seeking compensation from DOT for its expropriation of EGNB's interest along the Vanier Highway, as it pertained to the removed pipeline, was prudent because it was reasonable under the circumstances that were known to management at the time management took the decision.

The circumstances included EGNB's prior decision, which was prudent, to accept the cost risk of a future pipeline relocation.

EGNB asks the Board to agree with its assessment that costs related to the Vanier Highway Pipeline were prudently incurred.

As pointed out by EGNB at A-8 of its submission, if

the costs associated with that portion of pipeline are found not to have been prudent, EGNB's investors would be required to bear those costs.

This would be a significant burden to place on investors who have seen more downs than ups so far in EGNB's efforts to grow a successful natural gas business in New Brunswick.

Management of EGNB made a tough decision under difficult circumstances in 2000 to get natural gas off the ground in New Brunswick and more specifically in Fredericton.

Based on the foregoing, and given that there is no evidence to the contrary, EGNB requests the Board find that the costs incurred by EGNB were prudent and that the method of recovery be as outlined in the Board's letter of October 12th 2004.

And that is my submission.

CHAIRMAN: Thank you, Mr. Hoyt.

MR. HOYT: Mr. Chair, do you want me to just hand these out?

CHAIRMAN: We will pick them up after. That's fine, Mr. Hoyt. You brought up what was a very difficult time in 2000 and I have always felt that a lot of the difficulties were due to the fact that the province did not pass the standard construction bylaw that it was committed to in

the legislation, which I just bring it up now to say has there been any move afoot at all to do that to cover future situations? You seem to have the year of government right now, seriously.

MR. HOYT: Just on your point about the standard construction regulation, I mean, it was a factor in two ways, one it delayed things because we couldn't do anything until municipal operating agreements which were the replacement were negotiated with the municipalities, and I think the last ones were into August of 2000. And the other was it just created a lot of uncertainty as to what was actually going to be there and whatnot.

But to your question in terms of it going forward, my understanding is that the province, unless Mr. Harrington tells me otherwise, isn't really actively considering anything to do with the standard construction regulation because there have been -- there has been a form of a municipal operating agreement that seven major -- or seven municipalities have accepted. The Town of St. Stephen has used the same one. So I think the province is hopeful that they will just continue doing that. Now whether there is any update on that I would have to defer to Mr. Harrington.

MR. HARRINGTON: There is no update. I think the hard work

was done in 2000. Now that the format of agreement is in place, while there isn't as much to our benefit as we would have liked to have seen, it is acceptable and we are able to operate under those conditions. So this seems to be working and the government certainly is not interested in trying to -- I think it would be even more difficult from their perspective now to frustrate a number of agreements as between municipalities and Enbridge.

We are in dialogue now to discuss some changes, but this one is not being put on the table.

CHAIRMAN: Where I am coming from I guess, and that's because I don't know exactly what is in those agreements, I don't know if we have ever had any filed with us or not -

MR. HOYT: I believe they all were filed. The first seven anyway. If they are --

CHAIRMAN: They were. So I'm speaking from a position of total ignorance, but looking at it I know that they were using the -- well Moncton started it off with and whatever compensation there was in there from the municipality why it was tied into if anybody else gets a better deal then we are going to be able to match that, et cetera, et cetera, et cetera. So I'm just wondering since at present there is a hiatus in going into new municipalities that

something be done so that whatever that compensation package is it be capped now or meant so that it could be controlled in the future.

In other words just as soon as you added let's say Sussex and you agreed with them that in their circumstances they should have a greater compensation, then all of a sudden the other five or seven agreements are escalated up because of that.

MR. HOYT: Actually the way that it was done in St. Stephen, because it's the one that took place after the original seven were done, is that there was a formula after a lot of discussion that I believe tied the dollar amount per community to the population in some way, and that that formula is what was then applied to St. Stephen. So it didn't -- in that case it worked quite well.

CHAIRMAN: All right. Well that's good. I wasn't familiar with that. Another thing over lunch time conversation with Commissioner Sollows who was just attending a CANPUT national seminar in Vancouver actually a few weeks ago, and dealing with the regulators difficulty in dealing with utilities that are structured as EGNB is, and a limited partnership. And the dealings certainly in other jurisdictions in the country, dealings between Enbridge Gas New Brunswick and the limited partners is they are

being treated as an affiliated transaction. And I just think I should give you a heads-up on that as they will probably be chatting with you about that if there are any.

I think that Mr. Easson's review of EGNB's books has not been able to do that to this point in time, but certainly if it we are to follow what other regulators do elsewhere they do treat something between a limited partner and EGNB as being an affiliated transaction.

MR. HOYT: Was there any material from the conference that --

MR. SOLLOWS: No. This was a regulators only conference. And there was no transcript taken.

MR. HOYT: No, I thought it was a conference that might have been --

CHAIRMAN: A seminar that CANPUT put --

MR. SOLLOWS: A seminar, a working group.

CHAIRMAN: -- a working group on certain problems. And to your relief I'm sure the main thrust of it was trying to get a uniform system of accounts in place for electric utilities.

MR. SOLLOWS: The focus was not natural gas.

CHAIRMAN: No, that's right.

MR. SOLLOWS: If I may, just for clarification purposes, we heard in your evidence that there were in all of your

construction agreements only two occasions in which you would have had to sign away any right to receive compensation for changes. Is it -- that gives me the impression that that's a fairly infrequent event and would happen infrequently enough that it might not be out of order for you to consult with Board staff when you are asked to do it again, so that we can deal with this sort of things well before the fact or during the fact rather than way after the fact.

MR. HOYT: I think I got that message on the stand and I think we intend on making sure that when those, as you put it, infrequent events come up, we will do so.

CHAIRMAN: Thank you. You have been waiting to hear this. This concludes this matter.

Let's just talk about argument then, Mr. Hoyt. What is your preference?

MR. HOYT: What I was going to suggest was it's going to take a bit of time, I want to see the transcript, I want to follow up the comments Mr. Sollows made about these things on the Internet with the electric companies in Ontario just to see if there are differences that we should take into account.

We actually have a submission due on the 22nd in connection with the application for extensions. So I think it's going to be difficult to do it before Christmas

which maybe --

CHAIRMAN: I haven't even got December here.

MR. HOYT: Good. So I didn't have to do that. So going to January, we are here on January 6th at 10:00 in the morning at a pre-hearing on the rate application. I don't know if you have the same panel constituted or not --

CHAIRMAN: No, I don't.

MR. HOYT: -- but I thought if it was even anywhere close if another commissioner or something might -- we are going to be here that day and I just thought we could certainly be ready by then, but really it's up to you.

CHAIRMAN: I guess what I am hearing is you want to do it in an oral fashion?

MR. HOYT: Ours, yes.

CHAIRMAN: I think we could do that. Let's look at the timing from the point of view that -- Mr. Easson, do you have a preference to give something through Ms. Desmond so that she can speak to the Board on anything?

MR. EASSON: Yes, I would like to that.

CHAIRMAN: What about the timing involved here then if we looked at doing it on the 6th after the EGNB pre-hearing then?

MR. EASSON: That would be fine.

CHAIRMAN: That would be fine. Okay.

MR. HOYT: So right after or just after lunch on the 6th?

CHAIRMAN: Well let's say right after. And -- because that pre-hearing should not take that long I wouldn't expect. If it starts at 10:00 as it normally does we should be through by 11:00. However, I am very poor predicting these things, as we are finishing our fourth day on a half day hearing. Okay. So the afternoon of the 6th.

MR. HOYT: And that's just to argue the AFUDC?

CHAIRMAN: That's just our choice to argue AFUDC. Good. Okay. Fine. We will reconvene here after the pre-hearing conference. And that's for --

MR. HOYT: The rate application for 2005.

CHAIRMAN: Yes. After that. Thank you all. And thank you for your co-operation in what from my perspective has been a difficult thing to try and be fair to all and yet get through it. It has been a unique experience, that's for sure. Good. Thank you.

(Adjourned)

Certified to be a true transcript of the proceedings of this hearing as recorded by me, to
the best of my ability.

Reporter