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New Brunswick Board of Commissioners of Public Utilities

Hearing May 10th, 2000

IN THE MATTER OF AN APPLICATION BY ENBRIDGE GAS NEW BRUNSWICK
INC. DATED DECEMBER 31, 1999, FOR APPROVAL OF ITS RATES AND
TARIFFS.

Henneberry Reporting Service

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Chairman: David C. Nicholson, Q.C.

Commissioner: Monika Zauhar

Commissioner: Robert Richardson

Commissioner: R. J. Lutes

Commissioner: Leonard Larocque

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CHAIRMAN: Good afternoon. Preliminary matters? I think Mr. Blue has a statement that may be of interest to all of us here.

MR. BLUE: Thank you, Mr. Chairman. Mr. Chairman, members of the Board, I wish to report on a meeting that Mr. Barnett and I attended this morning with representatives of the municipal government in the Province of New Brunswick.

I am making the statement in this rates hearing because I would like to have a transcript of it that the Board, everyone present here and the representatives of the municipalities can have and read at the same time, since we did not have time to make detailed notes or record a decision as such.

I should state that while the representatives of the municipalities who attended this morning are -- appear to be in general agreement with what I am going to describe, they stressed that they would have to take the proposal to their municipal councils before they could indicate final agreement.

First, the representatives of the municipalities who were present represented the Village of Pointe Verte, the Union of Municipalities of New Brunswick, the City of Saint John, the Mayor of Saint John was there, the City of Fredericton, the Town of Oromocto, the Village of Rogersville, the Town of St. George, Edmundston Energy, there were representatives of the Executive Council office of the New Brunswick government, the City of Moncton, the Town of Dieppe, the City of Miramichi, the Town of Riverview and representatives of the Department of Environment and local government of New Brunswick -- and a representative of the City of St. George -- the Town of St. George, I am sorry.

The meeting was -- the purpose of the meeting was to discuss the form of standard construction regulation which the Province had on -- before it. This standard construction regulation has not been approved by the Governor-in-Council. It was essentially a draft that the Department of Natural Resources and Energy supported. We

had given a copy of this draft to Enbridge so that Enbridge could review it.

Without telling any tales out of school, from Enbridge's point of view, Enbridge wanted changes in the regulation. We had said no to Enbridge.

From the municipal representatives' point of view, they wanted complete changes in the regulation.

I think that if I described the mood as murderous rage, that might be understating it a little bit.

The -- suffice it to say that the municipalities did not support the draft that the Department of Natural Resources and Energy put forward.

This I say gives truth to the view that no good deed ever goes unpunished. The standard construction regulation was developed by the Department of Natural Resources to be of assistance to both Enbridge and to the municipalities. It is clear that that has not worked.

What is equally as clear is that there have been no substantive discussions between the municipalities and Enbridge Gas New Brunswick about forming municipal agreements, with the exception of the City of Fredericton which I understand has led to a fruitful set of principles of agreement.

The other problem that we see is of course that Enbridge wants to start constructing by July 1st, and we

established this morning with the representatives of the municipalities that they too want to see construction start on July 1st, but they do want to have their concerns addressed.

And again the Province's position is that there must be early, earnest and fruitful negotiations between Enbridge and the various municipalities.

The way we decided to resolve the matter was to come up with the following process.

The Province suggests, and the municipal representatives present this morning, subject to their council approval agreed, that there should be a meeting of the municipal representatives of Enbridge Gas New Brunswick Inc., the Province, and if the Board so wishes, a representative of the Board to be an observer. We have tentatively scheduled the afternoon of May 23rd, that is two weeks from yesterday, for this meeting.

The purpose of the meeting is to try to arrive at an agreement between the municipalities and Enbridge and the Province about a set of principles which will be the basis for negotiation of a municipal franchise agreement between the municipalities and Enbridge. Some municipalities may want to negotiate with Enbridge together, some may want to negotiate on their own behalf. That's up to the municipalities. But the agreement will be about a set of

principles that should be the aegis for that negotiation.

Those principles, as well, will be principles to guide this Board in resolving any outstanding disputes if the municipality and Enbridge cannot agree on details.

The product of that meeting, as I say, would be a set of principles and it is the government's intention to put those in a regulation and pass that regulation to assist the Board and to give guidance to the Board in resolving disputes.

I overstated my authority. The Department of Natural Resources and Energy would take the principles forward and seek government approval of those principles. And if they were approved to put them in a regulation and to have them guide the Board.

If we follow this process, the representatives of the municipalities who met this morning indicated that they would have no problem if the hearings scheduled for next week proceed and if the Board is so disposed, based on the evidence before it next week, to have a permit issued to Enbridge allowing construction to commence on July the 1st.

The municipalities would not then attempt to negotiate with Enbridge through the medium of this hearing through cross examination and by making argument.

Enbridge would have to agree for this to work, to enter into a preservation of rights agreement with each municipality. The preservation of rights agreement would allow construction to commence on July the 1st.

The preservation of rights agreement would further state that whatever cost either Enbridge or the municipality incurred until a final agreement had been either agreed upon or approved by this Board, would be borne by each party, and then would be subject to the terms of that final agreement.

This would allow negotiations to occur over a reasonably -- over a reasonable period and not force either Enbridge, who is very busy, or the municipalities, who want to think about these issues, to try to negotiate a municipal franchise agreement quickly before July the 1st.

So the idea again would be the hearing would proceed.

The permit would issue. If the Board otherwise permitted, construction would start on July the 1st. Rights would be preserved and would be subject to any final agreements negotiated between Enbridge and the municipalities.

And the Board would have to understand that the municipalities and/or Enbridge could come to it to resolve any final disputes that they could not agree upon at some

point in the future. But the construction of the system

in New Brunswick would not be dependent on those final Board decisions or negotiations.

So the process really separates the negotiation and signing of municipal franchise agreements with the Board settling those franchise agreements from going forward with the issuing the permit if the Board is prepared to do so and having construction commence on July 1st.

Now again I stress, as I stressed this morning to the municipalities and Mr. Barnett did, that it's essential that Enbridge start contacting the municipalities and start entering into negotiations with the municipalities so that Enbridge's negotiating team can meet the municipal negotiating team and they can start talking about resolving common issues.

Because I know from my practice that gas companies have been in municipalities all over this country for 50 years and they always have excellent relations with municipal governments, and things work perfectly, and if they get to know each other, this is all going to work.

So, sir, I will be happy to answer any questions the Board may have about what I have described. But I believe I have fairly described what we agreed upon this morning.

CHAIRMAN: I don't think we have any questions. The Board doesn't at this time. We probably will have later.

And my only concern, and I will voice that, is that we

have the legislative authority to do it. And I guess about the only way that can come about is if the Province were to promulgate a regulation it be called a standard construction by-law. Because it's that section, as I recollect it, where we derive our power to adjudicate as between the local distribution company and the municipality.

MR. BLUE: Yes. And part 2, there is also provision that gives you the express authority to resolve any dispute between the gas distributor and the municipality.

CHAIRMAN: Okay.

MR. BLUE: I will just try and find out for you.

CHAIRMAN: That's all right. We can discuss that on the break, Mr. Blue. Thank you very much.

Any other preliminary matters?

MR. MACDOUGALL: Mr. Chairman, just on that preliminary matter if I could just briefly comment on Mr. Blue's?

CHAIRMAN: Okay.

MR. MACDOUGALL: Just so that the Board knows Enbridge Gas New Brunswick has just heard this at the same time as you have. So we have -- I have no comment otherwise to make that, you know, we will have to share this with representatives of the company.

The construction hearing is starting Monday. There is certain -- there is exemptions and otherwise that the

company may wish to ask for or not ask for. We would have to determine between now and whenever the municipalities want to hear from us on whether they want an agreement in advance of Monday to determine their decisions.

This is absolutely and completely new to Enbridge Gas New Brunswick. This is the first time we have heard it. So just in case Mr. Blue left the impression that Enbridge knows anything about this or has agreed to any of it, the Board should be aware that that's not the case.

And we will have to obviously scurry directly after this to determine, you know, if this process is acceptable or not. But we have -- we can't make any comments on the process or the other comments Mr. Blue made today about how he feels the process may or may not have gone today.

But if the municipalities aren't going to show up on Monday at the construction hearing and want some assurances from us of what is going to occur, we have to go between now and then and determine what this process is all about and what has to be done.

So I just want the Board to know that we -- this is the first time we have heard what Mr. Blue had to say.

MR. BLUE: Mr. Chairman, I didn't intend to leave the impression that Enbridge had been informed of this or had agreed to this. I hope it will agree. I think it would be in its interest to agree. I urge you to agree.

We have not said that the municipal representatives will not show up on Monday. I understand they will. But I understand that they will be in a position to inform the Board that if this process goes forward, their participation in the hearing will be greatly reduced.

CHAIRMAN: Mr. Stewart.

MR. STEWART: Mr. Chairman, obviously Irving Oil is not involved in the issue between the utility and the Province and the municipalities. But we are an intervenor in the construction hearing. And I would be as happy as everyone else in the room that those issues were resolved.

But we do have issues for the construction hearing over and above the municipality issue. And I'm just sitting here wondering as a participant in that hearing, as Mr. MacDougall points out, which is supposed to start on Monday, just what as a practical matter or -- I don't expect people to be able to answer this question now.

But I just echo that the other non-municipality intervenors in that hearing on Monday are going to need to know what the ground rules for that hearing are as we go forward. I mean are they there? Are they not there? Are they half there? I'm sure these are issues the Board has to resolve as well.

But I would just urge those parties and the Board and to the extent we can assist and be available, we will

help. But it does create -- it does make quite a mess out of next week's hearing. There is no doubt of that.

MR. BLUE: The intention was to not have a mess next week.

The intention was to take issues that might have made a mess of the hearing off the table. And I hope it will -- I hope it will have that effect.

CHAIRMAN: Yes. I have only one further comment. Perhaps counsel can address this after they have completed their summation today.

And that is, Mr. MacDougall and Mr. Blue, what if we didn't start the hearing at -- what is it scheduled for, 9:30 or 10:00 -- 10:00 on Monday morning, but rather did it in the afternoon which might give Enbridge the opportunity to meet with the municipal representatives here in advance of the hearing. I just put that on the table and see what -- that it might be a worthwhile thing.

Okay. Are there any other preliminary matters? All right. Mr. MacDougall?

MR. MACDOUGALL: Yes, Mr. Chair. Thank you. Good afternoon, Mr. Chair, Commissioners. Enbridge Gas New Brunswick's oral argument this afternoon will deal first with the issue of the wholesale rate and second with the issue of the M & NP proposal before the Board.

So commencing with the wholesale rate, I would like to start by indicating that in Enbridge Gas New Brunswick's

view it is really Irving Oil Limited that is essentially the applicant with respect to the wholesale rate issue, as they like to call it wholesale service. And Enbridge Gas New Brunswick is responding to Irving Oil's position.

As stated by Mr. Maclure, the rates set forward in EGNB's proposal to the Province were illustrative in nature. And for various reasons described by Mr. Maclure in his evidence, the interrogatories and on cross examination, it is Enbridge Gas New Brunswick's view that it is not appropriate for it to be offering a wholesale rate in the New Brunswick market at this time.

For example, as noted in Mr. Maclure's direct testimony, the contractual relationship between the end use customer would be different under a wholesale rate where the marketer contracting as principal would eliminate EGNB's direct contractual relationship with the end user, a relationship that the company believes is vitally important in a greenfield environment.

There is the issue of safety and the potential problems for EGNB to know the identify of its customers as opposed to merely the location or identity of the location which was initially connected. And there is the reduced ability to communicate directly with that customer.

There is the concern that the distributor would be removed as the initiator of disconnection procedures. And

there are concerns with respect to the lack of direct regulation of the marketers communication with the end use customer.

For these and other reasons mentioned during the proceeding, EGNB believes that a wholesale rate may, rather than simplify the marketplace, actually confuse customers, particularly in the early years, as to who is supplying them service and who is responsible for which aspects of service provision.

You will recall that during the testimony of the EGNB witnesses, they dealt with various issues surrounding the problems of aggregation of various customer classes under a wholesale rate.

Again Enbridge Gas New Brunswick went first in this proceeding, as it is formally the applicant under the rate case. Therefore it addressed the matter in light of how it understood the proposal from Irving Oil Limited without the benefit of having heard cross examination of the Irving Oil panel.

Following yesterday's cross examination it became clear to Enbridge Gas New Brunswick that what Irving Oil Limited was requesting was a service where Enbridge Gas New Brunswick would send the gas marketers a bill which aggregated the individual distribution charges that customers would pay under EGNB's own end use rates, for

example the small general service rate or the general service rate.

Irving Oil Limited would take these individual distribution charges and rebill them to the end use customer so that, as Mr. Newton indicated, there would be no impact on postage stamp rates.

Mr. Newton went on to state that he would anticipate there would be separate wholesale rates offered for various customer classes. In the company's view this is not a wholesale service but is rather a statement bill which the company believes was the precise issue decided in the marketers hearing.

In this regard, Mr. Chair, Commissioners, EGNB respectfully submits that what Irving Oil Limited is attempting to do is merely reopen the billing issue already decided at the marketers hearing.

No matter how much Mr. Newton may indicate that what Irving Oil Limited is requesting is a service based on what appears to be the one criteria of simplicity to the customer, in fact their position is that they want to aggregate customers in a single class, provide them no different rate for their distribution service, but be allowed to bill them directly and separate from Enbridge Gas New Brunswick and separate Enbridge Gas New Brunswick from the end use customer who would be paying the exact

same rate as proposed by Enbridge Gas New Brunswick.

Irving Oil Limited was the party that challenged EGNB's right to bill its customers directly for distribution at the marketers hearing.

Enbridge Gas New Brunswick submits that the Board's finding at the marketing hearing was clear, that there was a distinction between three parties, the gas distributor, the gas marketer and the end use customers.

It is EGNB's position that Irving Oil has repackaged their approach to this matter and is now asking the Board to revisit this decision and allow them a second kick at the cat.

EGNB considers this inappropriate and sees no substantive evidence on the record from Irving Oil Limited to justify the Board imposing upon the distributor an order requiring it to provide a rate that, for the various reasons mentioned above, Enbridge Gas New Brunswick does not believe is appropriate in the market at this time.

Mr. Newton was not able to give any examples of any jurisdictions in North America where a wholesale service or rate is currently offered by an LDC or mandated by any public utility board to be offered by an LDC.

Mr. Newton made the distinction that this is because this is a greenfield market. And other jurisdictions in North America are not necessarily so.

However, it was clear from the evidence throughout the rates proceeding that there are greenfield markets presently in Nova Scotia, the state of Maine, Inuvik, formerly on Vancouver Island, et cetera.

No evidence was placed before this Board that those jurisdictions required the LDC to offer a wholesale service or rate.

That being said, Enbridge Gas New Brunswick takes exception with Mr. Newton's comments that a wholesale rate would be more appropriate in a greenfield market. In fact the opposite is true.

It is Enbridge Gas New Brunswick's view that the market will develop without the complications caused by providing a wholesale rate.

In the early years it is vital that end use customers in the province of New Brunswick, particularly residential customers and those in the small general service class understand the parties with whom they are dealing.

Enbridge Gas New Brunswick believes it is necessary to have formal contractual relationships whether it be the marketer acting as its agent or otherwise with its customers.

And it feels it is necessary to avoid the level of complexity and potential pitfalls around disconnection, dissemination of information, et cetera that would be

caused by a wholesale rate at this early stage.

Dr. Foster, in Mr. Maclure's evidence was clear at the marketers hearing. And EGNB believes it was accepted by this Board as to why Enbridge Gas New Brunswick should both read the meter and bill the end use customer.

For one example only I would refer you to page 106 of the transcript from January 10 of the marketers hearing where Mr. Maclure states in the first paragraph "In the future there may be opportunities that we would look at for other billing options in the future. But in the early years I think we clearly feel that there is a need for our bill to go out to the end use customers."

In paragraph 7.1 of the marketers hearing decision this Board stated, "Another issue was the nature of the relationship between gas distributors, gas marketers and their customers." There was a clear differentiation between the three parties in the chain.

In paragraph 7.3 of your decision it was specifically noted that argument was presented that the billing process allows the LDC to provide additional information to gas customers on issues such as safety, gas utilization, rate and regulatory information.

Mr. Chair, it is EGNB's position that first there is no evidence on the record supporting the need for a wholesale rate or service whereby a wholesaler would

aggregate various customer classes, a service which for the reasons noted above, EGNB does not think is appropriate in any event. This however appears was not the service being provided or being suggested by Irving Oil.

And second with respect to the proposition for a wholesale rate or a service as proposed by Irving Oil Limited, this is really a billing option and a method of moving the customer from Enbridge Gas New Brunswick to Irving Oil and eliminating what Enbridge Gas New Brunswick believes to be an extremely important relationship between it and the end user.

Therefore the company feels that the Board should deny Irving's request that a wholesale rate be offered.

Now I would like to move on to the issue of the M & NP proposal.

With respect to the service agreement with M & NP, Mr. Harrington described in detail, in his written testimony and subsequently on cross-examination, the various changes from the time of EGNB's proposal to the Province up to today with respect to the facilities which EGNB now believes should be constructed by Maritimes and Northeast.

In some instances single end use franchises did not develop in communities where Enbridge Gas New Brunswick

felt it might be possible to interconnect with an M & NP

lateral.

In coming to the proposal before the Board it was noted by Mr. Harrington that there were two objectives. One was to allow EGNB to attach as many customers as reasonably possible along the pipeline route. And, two, to reduce the deferral account balance, and accordingly rates, to the maximum extent possible.

What I believe is fundamental for this Board to consider, and what at times during this proceeding appeared to be unclear to some parties, is that the facilities in question must be built. EGNB must have some arrangement or relationship with Maritimes and Northeast in order to tap into the M & NP pipeline and serve Enbridge Gas New Brunswick's distribution network.

For St. George and Moncton it must have lateral facilities constructed.

Although EGNB could construct the St. George and Moncton lateral facilities themselves and have these costs put into EGNB's cost of service to be recovered through rates, based on the objectives which I previously noted, it was determined appropriate to have the lateral to St. George and a significant portion of the lateral to Moncton on which there are few, if any, potential distribution customers built by M & NP.

With respect to the custody transfer facilities, it is

important to note that no party in New Brunswick other than EGNB has come forward to take capacity on M & NP's pipeline with primary delivery points at the delivery points in question such as to provide the economic basis for construction of these facilities by M & NP. This responsibility has fallen to Enbridge Gas New Brunswick and it has accepted this responsibility.

However, since Enbridge Gas New Brunswick is not a marketer and in fact, as this Board is aware, it is prohibited from supplying natural gas to customers otherwise than as the supplier of last resort, it has no specific use for the capacity for which it is contracted.

In Mr. Harrington's words during his direct testimony he therefore raised the question, why enter into this contract? The answer is, it gets the facilities built and as well it ensures that Enbridge Gas New Brunswick's distribution customers do not pay for the facilities twice.

What do we mean by this latter point?

If EGNB, one, constructed the facilities which it could, the laterals, and pay the direct aid to construct for the custody transfer stations, or, two, pay the direct aid to construct for all the facilities which it proposes to have built by M & NP, then Enbridge Gas New Brunswick's customers would still require upstream capacity on the

main line pipeline to move gas to them.

Not only would they be paying in their cost of service, the cost of Enbridge Gas New Brunswick's construct of facilities or the aid to construct, but they would also pay a marketer the M & NP toll for the capacity they need to utilize.

As noted by Mr. Harrington, Enbridge Gas New Brunswick has been negotiating with M & NP since October. As noted by Mr. Marois, these negotiations escalated to the president level in both organizations.

Mr. Chair, Commissioners, Enbridge Gas New Brunswick is proud to say that the results of these negotiations are in its view a tremendous achievement for its ratepayers. It is extremely proud of the proposal it has on the table today before this Board.

The contract negotiated requires EGNB to take the minimum capacity and thus the minimum dollar commitment required to get the facilities constructed.

However, as noted by Mr. Harrington, those facilities will be built to accommodate forecast system requirements for the communities it will attach. And the costs incurred are a very small portion of the capacity to be utilized by the proposed market which these facilities will accommodate. This is vividly portrayed in exhibit I, schedule 4, and I suggest that the Board particularly

review that schedule in coming to its determination on this matter.

By "backing in" to the minimum costs required to have the facilities constructed, and to allow for M & NP to receive the required National Energy Board approvals, Enbridge Gas New Brunswick has taken a new and innovative approach with the pipeline which brings significant benefits to the ratepayers in the Province of New Brunswick.

Some discussion was had with respect to whether EGNB had considered challenging Maritimes and Northeast before the N.E.B. with respect to issues such as the 60 cent test toll or M & NP's commitment to build the custody transfer facilities. In this regard, Mr. Chair, Commissioners, what must be kept in mind is that just like with the proposal to allow M & NP to construct the St. George and Moncton laterals, even if EGNB felt it could convince or compel M & NP to allow it to build the custody transfer facilities, Enbridge Gas New Brunswick would rather opt for the proposal before the Board today.

As clearly demonstrated by exhibit I, schedule 5, to the extent Enbridge Gas New Brunswick can alleviate only 18 percent of the value of the service agreement, all of its ratepayers are better off than if Enbridge Gas New Brunswick paid by way of an aid to construct or

constructed the facilities themselves.

As indicated by Mr. Harrington, Enbridge Gas New Brunswick will work over time, as it hopes others will, such as the Province of New Brunswick, gas marketers, single end users in the Province of New Brunswick, et cetera, to suggest changes to the M & NP tariff which may be of benefit.

Obviously, however, any such determinations are the subject of National Energy Board approval and suggestions by third parties may not always win the day, particularly as Maritimes and Northeast Pipeline has the interest of its own ratepayers in mind.

With respect to the issue of the release of capacity, Enbridge Gas New Brunswick's evidence is clear that it is confident that a market exists for the 11,785 gigajoules for which it has contracted. Again I would refer the Board to exhibit I, schedule 4, which shows the relatively small size of this commitment compared to forecast average daily volumes for the Enbridge Gas New Brunswick franchise area over the next 20 years. Enbridge Gas New Brunswick is confident of the speed of market development which is supported by the statements by Mr. Pat Langon, President of the M & NP pipeline which were referenced in EGNB's response to Irving Oil interrogatory number 4.

There is nothing in the evidence to suggest that

EGNB's forecast that it should be able to receive 60 to 70 percent of the value of the capacity is incorrect. And to the extent it does so, the ratepayers in New Brunswick are substantially better off than if EGNB were to construct a portion of the facilities in question or pay an aid to construct to M & NP.

The question now is, why should Enbridge Gas New Brunswick not be given the flexibility to try to maximize the value of the capacity which it has for resale, capacity it has entered into and contracted for for the benefit of ratepayers in New Brunswick.

Mr. Chair, Commissioners, I would suggest that flexibility is exactly what this Board should approve. Enbridge Gas New Brunswick is requesting that it have the flexibility to participate in the secondary market in the same manner as all other parties, no differently, no benefits, no negatives.

As Mr. Newton stated, this is not unique for LDCs elsewhere in Canada. Mr. Kirstiuk indicated that Irving Oil could be a participant in this market. He also agreed that other parties such as Nova Scotia Power, New Brunswick Power, could be participants in this market. These parties, unless somehow otherwise regulated, will not be subject to restrictions on how they resell their capacity in the secondary market, or how they purchase

capacity in the secondary market.

If Enbridge Gas New Brunswick is to be able to maximize the recovery of the value of its capacity, thereby reducing its deferral account and rates paid by its customers, it should be allowed to do so on a level playing field. There is no evidence before this Board that Enbridge Gas New Brunswick will not seek to maximize the value of the capacity it has for sale. Rather, the exact opposite is true.

The basis of EGNB's proposal is to allow a mechanism to over time eliminate, or to the fullest extent possible eliminate, the costs to its customers. If Enbridge Gas New Brunswick did not wish to reduce the deferral account it would not necessarily have elected to have M & NP build any lateral facilities. It could have opted to build these facilities itself and place them in its cost of service.

However, this is not the most economic thing for Enbridge Gas New Brunswick or the ratepayers of New Brunswick. In fact, imposing constraints on the ability of EGNB to function in the normal manner in the secondary market could well cause EGNB to have to re-focus on whether or not the 60 to 75 percent target was achievable.

EGNB's hope is that this Board will allow it the flexibility to maximize recovery and activity it has

undertaken for the benefit of all its ratepayers, no matter what contentions may be made by others.

With respect to Irving Oil's constant spectre of concerns regarding an EGNB marketing affiliate, EGNB's evidence remains that no marketing affiliate has yet made a decision to participate in the New Brunswick market, and as specifically stated by Mr. Maclure, no discussions have been had with an EGNB affiliate with respect to capacity resale.

As noted in questioning yesterday by Mr. Blue, this is an unbundled market and an unbundled regime. If there is an EGNB marketing affiliate operating in New Brunswick, it is Enbridge Gas New Brunswick's submission that it should be entitled to operate on the same level playing field.

Issues around such concerns were dealt with at the marketers hearing. In this proceeding it was pointed out that Section 69 of the Gas Distribution Act, and in particular Section 69(h), makes it clear that Enbridge Gas New Brunswick cannot unjustly discriminate amongst marketers, and that is all marketers, with respect to the allocation, assignment or resale of capacity on a transmission line.

This is exactly what the proposal before this Board would allow EGNB to do.

Not only does the Act provide for specific provisions

in this regard but as was made clear by Mr. Marois and Mr. Maclure, the Board will have the full opportunity to review the prudence in EGNB's decisions with respect to the release of capacity, in the same way that it will review the prudence of all costs incurred by Enbridge Gas New Brunswick.

Mr. Harrington pointed out that Enbridge Gas New Brunswick was agreeable to using open and transparent processes to the extent they did not hamper its ability to act flexibly in the market place.

Mr. Forget explained the necessity to be able to act quickly in the market by maintaining open lines of communication with various market participants.

Sales of capacity could be for short term in peak months and generate a value well above toll, or they could be for longer duration and generate a portion of full toll. EGNB wishes to have the ability to make determinations on the best value in the secondary market at any given time in the same way as all other participants in that market. This is the same flexibility approved by the National Energy Board in its decision filed as exhibit A-27 in this proceeding.

As Enbridge Gas New Brunswick plans to make its decisions prudently, it does not believe it should have restrictions placed on it at this time. But rather it is

willing to make its decisions with the full knowledge that this Board is entitled to review the prudence of those decisions.

At this time I would like to restate what Enbridge Gas New Brunswick is asking the Board to approve with respect to the M & NP issue.

First EGNB is asking that the Board approve the inclusion of the financial commitments of the service agreement with M & NP in EGNB's cost of service for the life of the contract.

And second that the Board approve EGNB's proposal to market this capacity and the use of any revenue generated to offset the costs incurred under the service agreement.

EGNB believes that its proposal gives this Board an opportunity to support the development of gas distribution in New Brunswick to the benefit of all ratepayers. It gets the necessary facilities built. And it ensures end users access to natural gas in a cost-effective manner. That is the goal of Enbridge Gas New Brunswick.

That is the end of my argument, Mr. Chair,
Commissioners.

CHAIRMAN: Thank you, Mr. MacDougall. Mr. Stewart?

MR. STEWART: Mr. Chairman, one thing I neglected to do when we were I guess listening to Mr. Blue's comments. Yesterday in his testimony -- or Mr. Newton gave an

undertaking to file with the Board a New York State staff report with respect to the wholesale issue. So I have the requisite stack of copies here.

CHAIRMAN: That will be C-31.

MR. STEWART: I should make sure I have one for myself, Mr. Chairman.

MS. LEGERE: There is two left here.

CHAIRMAN: The secretary has two over there. Oh, who shut the door? I have a tough time keeping this an open public hearing. Thank you, Mr. Zed.

C-31. Go ahead, Mr. Stewart.

MR. STEWART: Thank you, Mr. Chairman. Like Mr. MacDougall I will deal separately with the issue of the Maritime and Northeast transport capacity and more properly its disposition, and also deal with the wholesale service issue as well.

And I guess it is rather appropriate that I'm going to deal with them in the opposite order that Mr. MacDougall did, just to be consistent with how things are going forward up to date.

As we stated in our evidence, in both our prefiled evidence and in Mr. Kirstiuk and Mr. Newton's testimony, Irving Oil Limited or Irving Energy Services supports the Enbridge Gas New Brunswick proposal in principle.

Their details may have been a little scant. But we

agree that at a minimum they should be able to remarket their capacity at or over their 18 percent break-even point.

And to the extent that we now find ourselves between the proverbial rock and a hard place where these facilities must be built one way or the other, it would appear that that is the most economic option. And to that extent Irving Oil supports the proposal.

The issue for us is however, as I think Mr. Kirstiuk made clear yesterday, is once we have got to that point, how that capacity is disposed of on the market, particularly in the context in which it is being purchased by Enbridge Gas New Brunswick, that is push come to shove, the bottom line is that any amounts owing under that agreement are to be guaranteed or underwritten by Enbridge Gas New Brunswick's ratepayers, ratepayers who will be our customers as well.

We suggest that there should be four guiding principles surrounding the Board's ruling on the disposition of this capacity.

Firstly -- and I'm sure that my friends at Enbridge will agree with this point precisely -- and that is that the capacity should be marketed such that the

highest potential value is
achieved.

The reasons for this are obvious, minimize the

deferral account, save carrying costs on those amounts in the deferral account till we get through the end of this so-called development period, and those amounts can actually start being paid, and therefore minimize the effect on long-term rates in the system.

However, this is not the only consideration. It is an important consideration, clearly the most important consideration but there are other factors at play here as well.

The second guiding principle is that the capacity should be marketed in a way that does not negatively impact on the market integrity of the N.B. -- excuse me, the New Brunswick gas system.

And I don't just mean Enbridge Gas New Brunswick's distribution system but the natural gas industry in the province as a whole, particularly now when it is in its infant stage.

It should be done in such a fashion as to not preferentially advantage marketers with -- and I think Mr. Kirstiuk used the term yesterday, staying power, like for example my client, Nova Scotia Power, who I think is going to operate under Enercom, you know, Sempra as Energy Source Canada, and that an opportunity be given to those who may be, for lack of a better way to put it, smaller market players or those who do not have that so-called

staying power in the market. It must be done in a way to avoid the appearance, not merely the fact of affiliate cross-subsidization.

The third guiding principle is really the converse of the second. Conversely, disposition of this capacity could be used as an opportunity, again to the extent that it has not overtly or overly changed the bottom line recovery, to have a positive impact on the market, and to the extent that we can use the marketing of this capacity to help the market go forward and grow, then that fact should occur as well.

As I have just mentioned, the sale of this capacity may create, for lack of a better way to put it, an in for smaller marketers or new players who may not have the capital, or even if they could lay their hands on the capital, the inclination to enter into the necessary long-term contract with the pipeline, but still enter into the New Brunswick market and grow their market and in turn grow their capacity as they move forward.

Furthermore, by using the marketing of this capacity in an effective or positive way to help grow the market, it can send a positive message to those potential marketers who are out there. And again I have made that argument to you before and I wholeheartedly make it again.

I think it is important not to lose sight of one very

important fact. The reason why we are here today, the reason why Enbridge has to build these facilities or sign a firm service agreement to have them built by the pipeline is because either single use franchises didn't take place or, as Mr. MacDougall just told you, no marketer stepped up to sign firm service into their system, or they would have already been built.

This is a clear practical example of how the lack of marketers in the marketplace can have a direct effect on the rates that New Brunswickers will pay for their natural gas.

If we had a whole bunch of other marketers here in New Brunswick, somebody would have likely signed for that capacity in advance. And we may not have been here. I agree that is personal speculation on my part. But I think it is an important point not to lose sight of.

The fourth guiding principle. Since Enbridge Gas New Brunswick is asking the ratepayers to guarantee its obligation here -- and they can sort of sugarcoat it how they want, that is how it comes out to the bottom line -- the marketing of the capacity must be done with a view to ensuring that the public can examine and scrutinize the sales of that capacity as they see fit to have the level of comfort that they need.

Because you on their behalf are going to guarantee

their commitment to meet any unrecovered costs, to feel that they have been properly taken care of.

The process, or at the very least they need to know that as ratepayers on the system, that even if they don't personally choose to come down and scrutinize these sales, I suspect most of them wouldn't understand it if they did.

But they have to have confidence in you and us that the system is a public and open transparent one and that their interests are being taken care of.

With respect, Enbridge Gas New Brunswick in the sale of this capacity will not be a regular secondary market trader or player.

They -- everyone else who trades on the secondary market, if they make a bad deal or don't recover the best price for their capacity, they pay the consequences of that in their own bottom line. Enbridge Gas New Brunswick will not.

Again we support that. We don't necessarily disagree with the request that they had made to you here. But it is a different circumstance. And because of that public guarantee that is being requested, then along with that comes a certain public responsibility in how the capacity is dealt with and how the public's money is being handled.

Hopefully you will think that the five points I just -
- or four points, excuse me, I have just outlined are

laudable goals and we think they are.

But when I was preparing this presentation I realized -- the note that I made on my page is well, that is all well and good, but how do we actually effect those things?

And hopefully I can make some suggestions for you.

First we considered the suggestion that Mr. Blue made yesterday in his cross examination of Mr. Kirstiuk concerning the provisions of paragraph 60 (o) of -- 69 (o), excuse me, of the Gas Distribution Act 1999.

And I won't read you the paragraph. But in essence you will recall that it provides that the utility or the LDC or now we know to be Enbridge Gas New Brunswick to file with the Board certain procedures so that I guess everyone, the Board and the public and everyone else involved in the industry can have a level of comfort or ensure that Enbridge is in fact complying with the requirements of Section 69.

Accordingly, it is our suggestion to the Board, our submission to the Board, that Enbridge Gas New Brunswick be required to file with the Board a procedure or a protocol on how they intend to dispose of their pipeline capacity.

We expect over the years as the utility goes forward they will file a variety of these protocol or procedural

documents with the Board. And this will just be the first of probably many.

Now we are not advocating an exhaustive document, maybe two or three pages. But it will be necessary for the protocol to be established in advance, filed with the Board, so that the public and all interested participants understand on what basis Enbridge will dispose of its capacity and try to earn back its \$3 million commitment a year.

We believe that this approach will in turn serve a three-fold purpose. Firstly -- and I would submit the reality of Enbridge Gas New Brunswick's position is here is -- and I think Mr. Maclure testified to this or one of the gentleman on the panel did, that they really don't have a plan on exactly how they intend to dispose of the capacity.

In fairness to them, they only signed the deal a week or two ago. And this whole regulatory process has been going at light speed. And they may really have not had an opportunity or even an opportunity to do some sort of industry consultation over what is the best way that other market participants may think that this should be handled.

But the reality is that you are going to have to make the decision without knowing what the plan is. And I think it's easier for you to make the decision, and for

those of us who may be affected by it to live with that decision, if we know that there will be a plan and it will be filed with the Board at some point in the future, certainly before the capacity actually goes up for sale in September.

Secondly, having a predetermined plan or protocol helps keep the playing field level, and ensures that everyone big or small, knows the ground rules over what will happen with this capacity.

We believe having the ground rules established will once again send the right message to potential marketers.

And it will also provide a situation where instead of dealing with complaints after the fact, we have a protocol or procedure established to avoid problems rather than trying to address problems after they have happened. Again, all of that is good for everyone.

We appreciate that when you market capacity that it will require a certain element of flexibility. Of course it will. And again we find ourselves making a recommendation to you that, you know, we talked about the light-handed regulation issue, in many ways this is very analogous to that.

I mean there is a spectrum here. There is a spectrum of complete unfettered discretion to do with the capacity whatever you want, which, with respect, I think is what

Enbridge is asking for. And I think they are asking for it for a laudable goal in terms of trying to maximize recovery.

There is the other end of the spectrum which is, you know, a Board directed mandatory process for the disposition which in the end of the day may not maximize the potential for recovery.

Somewhere in between there is the appropriate balance.

One which protects the public's, you know, interest because they have guaranteed these amounts, and creates a positive effect on the marketplace, and one which allows us to actually maximize the dough that we need to cover the \$3 million a year when the capacity is sold.

We suggest, work up a protocol, file it with the Board. Everyone will know in advance to the benefit of everyone. That gives the public its protection. It gives the marketers the protection to understand that there is not anything going on with any affiliates. And also creates for those people who are on the outside looking in an opportunity to get at the capacity.

In terms of the actual fine mechanics of this protocol, whether it's offered on an electronic bulletin board or whatever mechanism that may be required, our view is that's probably best left to the working group for the industry players to work out the details a little bit.

But we leave that to the Board's discretion.

Now, having said all of that, we believe that it is crucial that the Board set certain parameters within which this protocol must operate. Set the ground rules. The industry participants will get together and work out the details and file it with the Board.

And as you might expect, I have some suggestions of what those ground rules should be. First and foremost, whatever the details of the process, it must be an open, public, transparent process.

Specifically, or conversely, there must be no prearranged deals unless the full toll is recovered. Once the public has been made whole, ones the ratepayers have been made whole, well, Godspeed to Enbridge if they can get more than that. And if it goes to the -- if it goes to remove or to reduce the deferral account if they can actually sell this capacity at a premium, wonderful for all of us.

There must be some procedure put in place where notice of the sale of the capacity is given to ensure that everyone has the opportunity, not just a select few industry -- big industry players to purchase the capacity.

Next is that the sales of the capacity should be limited to a two year term. And here is why. I think it helps address the concern that we have raised, and oddly

enough it's a concern that may be to our disadvantage, but the possibility that the sale of this capacity could be cornered or gobbled up by a market player with, as Mr. Kirstiuk put it, staying power.

I know it seems sometimes a bit counter-intuitive that Irving Oil comes to you and says create an environment which helps their competition. But we know that the bottom line here is it is better for the market and therefore better for us if there are several marketers operating here.

We are going to be right back here dealing with special circumstances that have already been created like there are no firm service agreements to build the pipeline or to build the facilities, therefore the utility has to do that. And I don't think that -- I don't think Enbridge wanted to be there. I know Irving Oil didn't want them to be there. I know that the other marketers won't want them to be there.

By limiting to a two year term, again that helps smaller market players to access smaller bites of capacity and know that they are not competing for the bites of that capacity with people who can afford to buy it for a 10, 15 or 20 year term.

It also sends the right message again that the New Brunswick environment -- the New Brunswick market has

created an environment which allows room for smaller participants. And to a certain extent helps address the cross subsidy issue. I mean if you are only selling two year blocks, there is not such a concern there.

Finally, this will be the last general guiding principle that should surround this protocol we are suggesting, is that the Board must recognize the concern of or at least the appearance of cross subsidization to an affiliate.

Now, do I or do Irving Oil think that somehow Enbridge Gas New Brunswick has, you know, cooked a scheme here to, you know, get its ratepayers to guarantee some transport capacity and then spin it out to a marketing affiliate at a deep discount? Of course we don't think that. No, we think that Enbridge Gas New Brunswick was faced with there being no marketers having signed long term capacity agreements to build the facilities, and they are trying to get them built as cheaply as possible. That's part of the reason why we support it.

But with respect, the scenario is still there. And we believe that it's best we set the ground rules up front so that not only won't cross subsidization happen, but that if in the future an Enbridge marketing affiliate does buy up some of this capacity, we all know that it was done on a fair and appropriate basis.

Our suggestion was that if you are -- if you are not going to limit the sale of the capacity to a prearranged deal only over toll, or you are going to allow them under full tolls, I guess, is that you carve out a special exception for the affiliate. Now I understand that Mr. MacDougall has said to you, well, that wouldn't be fair, that's treating our marketing affiliate different than potential other marketing affiliates. Well, so be it.

Section 69 of the Gas Distribution Act sets a whole code of conduct surrounding certain special rules that are put in place between the dealings between the general franchise holder, Enbridge Gas New Brunswick, and any affiliate they may have operating in New Brunswick. If you want to do it, that's what you have to do. And unfortunately the protection of I think the public and the industry requires that.

Again we think Mr. Blue's suggestion yesterday that, well, couldn't you address that concern by saying well anytime an Enbridge affiliate is going to buy the capacity for X numbers of dollars, whatever it is, that you offer it on the market for that same price. And if nobody steps up, then we know that there is no special deal going on. Quite frankly that's not a bad idea. It's a good idea. In essence I think it's a variation of the theme of no private prearranged deal with an affiliate under full

toll, but a rose by any other name. And I think it's a good approach. And if you would like to express or set a parameter in that fashion, we could support that.

To the extent possible, we would want all marketers to be treated fairly and that does include an Enbridge affiliate. But it is true that, you know, the old saying justice must not only be done, but it must be seen to be done. And we believe that's appropriate -- an appropriate consideration here as well.

In summary, we suggest that the Board direct Enbridge Gas New Brunswick to, either after consultation with a working group or perhaps of its own volition, to file with the Board within a reasonable period of time, certainly before the capacity goes on sale, a procedure or a protocol setting the basic ground rules for the disposition of this capacity. And again, hopefully trying to bring forward the goals that we have set here by trying to take advantage of this situation by creating a positive market influence and making sure that we get as much of the \$3 million a year back that we can.

Wholesale service. I just want to make a couple of comments on items that Mr. MacDougall raised. And, you know, he did point to Nova Scotia as a greenfield market which hasn't -- well, of course, we all know that Nova Scotia hasn't decided any of these issues yet. So Nova

Scotia may very well in fact allow a wholesale service. And I can tell you that it's my client's intention to submit that they should.

And, you know, this is not some pie in the sky approach that, you know, Irving Oil has dreamed up here to try to get around the billing issue. The wholesale service idea came from Enbridge Gas New Brunswick's proposal to the Province of New Brunswick. And, with respect, it was the Board who put it on the agenda, not Irving Oil. It's an issue that has been near and dear to our heart from the beginning, that is true. But we do take umbrage with the suggestion that we are somehow trying to get around the Board's previous ruling.

Now, does the existence of a wholesale service have with it a billing component? Well of course it does. I mean that's undeniable. But we argued before this Board in January that Irving Oil Limited should be allowed to include the LDC charges on its bill as a matter of course.

The Board in its wisdom saw fit to not allow -- or force Enbridge to allow us to do that. Well, fine. We have come to grips with that issue.

But what we are talking about -- and I know poor Mr. Newton gets a little fired up when he gets -- because I know it's an issue that's close to his heart. But what we are talking about is, well, it's a discussion that we had

during closing argument for the rates case as a whole. And that is that Irving Oil and the other marketers are going to be where the rubber meets the road. We come to this proceeding and to this industry with the perspective that we are the ones out there who have to shake our hands across the table to do the deal.

The actual selling of natural gas and related services are absolutely crucial to the success of this industry. It is absolutely crucial to the success of the Enbridge system. If nobody buys gas, or not enough people buy gas fast enough, this whole system could break down. The deferral accounts will be huge and the revenue won't come in fast enough to recover them.

And so we are an essential, and the other marketers as well, but our client understands that we are an essential piece to this pie. Now we are only one piece to the pie.

And Enbridge comes before you with the utility or the distribution company's perspective, as well they should. And we are delighted that they are.

But we are coming forward from the marketer's perspective. And we are saying when you make these decisions, don't lose sight of that perspective. Don't lose sight of the consequences on how you arrange the LDC's affairs, that it's going to have on the people who have to shake the hands across the desk and convince our

customers that they have to lay out the capital to convert their systems to consume natural gas.

As I said last time, don't fall into the trap of assuming that if you build the system people will automatically convert. This is a greenfield market. There is not a single customer or potential customer in this province who is now set up to consume natural gas, no one.

And every single customer from Mr. and Mrs. Smith in the North End of Saint John, or in the back street in St. George, to hospitals, to universities, to, you know, medium size commercial and industrial customers are going to have to lay down hard cash simply to convert. They are going to have to make some very complicated decisions about do they maintain dual fuel capacity. Do they -- you know, which of these Enbridge rate classes should they try to fit into if they are commercial or industrial customers, what rates should they sign up for.

It's going to be a complicated process. And it will be a struggle for the marketers, a challenge they are prepared to take on -- or at least Irving Oil is, and others are as well, I'm sure, to convince these people to do that.

It will be absolutely essential to make the system work that the customers who are actually making those

decisions have a process which is as seamless as possible, that we make it as easy for people to convert to natural gas as possible.

And from the marketers perspective, or at the very least this marketer's perspective, one of the options which we want to make available to our client is the aggregation of their end use burner tips and allowing us to contract with Enbridge on their behalf.

You know, when you go to the four people -- I don't even know if these numbers are correct -- but I'm just trying to pick an example that we can all use. When you go to the four different people who own Tim Horton franchises in the city of Saint John -- I think that was the example I used in cross examination -- and say, you ought to convert all your shops, because I know maybe you got propane-fired, you know, equipment and you may be able to convert, and here is the thing. And those are going to be complicated business decisions for those people to take.

Now those people are sophisticated business people. But they don't know anything about this. And we are going to have to sell them on it if they are going to do it. And we need to make it as easy as possible for them to convert. And if we can present them with a seamless package then so much the better for all of us.

Or more importantly the more options we can present to potential customers, the more likely that we will find an option which the customer will fit.

Now maybe this wholesale service might be established and it never be used. Maybe that is the way the market is going to unfold. Maybe it will be used all the time. Maybe some marketers will use it, some marketers will not.

But unless there is a clear reason for doing so, you should not remove any option which will allow the marketer to sell natural gas. Because when a marketer makes the sale, that is good for the consumer. It is certainly good for the marketer. And it is good for the distribution services -- service, excuse me, Enbridge.

And it is good for the other ratepayers on the system.

Because everybody that gets added onto that system, the higher the revenue for the system, the smaller the deferral accounts, the quicker we can get on to business as usual.

So after all that, what exactly are we suggesting? We are just suggesting that we, Irving Oil, and other marketers as well, have the option, if they choose, or if they feel that that is what their customers want -- now this particular marketer thinks that is what their customers or some of their customers may want -- the right to contract with Enbridge Gas New Brunswick for

distribution services directly. That is it. That is really all it is.

Now we are prepared to limit the aggregation of groups to those in the same rate class. We are not looking for a special discounted rate.

And I know on cross examination Mr. Blue pointed out -- you know, made Mr. Newton say that he would never rule that out in the future. And I think that is a fair thing for him to have done, you know. Maybe this would turn out to be so successful that some sort of discount would be warranted.

But there is no smoking gun here. It is not our intention here to set this up and then come back, you know, and with their long-term goal of trying to chisel down the rates. It is not the case and there is no evidence to suggest that.

We simply want to be able to have amongst the series of options we can provide to our customers, the idea that they can step up and do all their dealings with one individual. That is it.

Anytime -- you know, what is the old saying, too many chiefs and not enough indians. If you are in a situation where you bring an order for our customers to convert, particularly some of the larger customers, when you create a situation where they have to contract with two or three

different parties when they don't want to then they are least likely.

If they want hydro, they go to one person. If they want oil, they can go to one person. If they want natural gas, they can't go to one person. We know that they are going to want to do that.

Mr. Maclure reminded us in his testimony yesterday that, you know, for the first three rate classes or at least the first two and a half -- because I think in the third rate class there is some question about whether they will or they won't -- for the marketer -- the customer doesn't even sign a contract with Enbridge, you know.

The sanctity that Enbridge is trying to create the right, you know, to have a contractual relationship with a customer, they don't even sign a contract. And in fact what happens is the marketer goes in and signs the contract as agent.

So what we are suggesting is not that fundamentally different than what is going to happen as a practical matter for a large number of customers in any event.

And the only difference is that rather signing as agent with Enbridge, you sign as the principal person liable on the contract. Instead of having to collect from a bunch of people they send their bill to one central location and they get paid.

Remember this is an optional service. And it may be used a great deal or it may be used very little.

We are not looking to fool around with the integrity of the rate system and particularly the so-called postage stamp rate system and, you know, the required level of diversity that will be needed in order for that system to work.

Any rate set for a wholesale service -- and for the moment we are prepared to go forward on the basis that there should be no different rate -- should never be such that it would affect the integrity of the system.

You know, I was thinking yesterday when Mr. Newton was testifying that well, you know, it might be possible although we are not advocating this at this time, the one thing that went through my mind is well, okay, if Enbridge Gas New Brunswick contracts with, you know, 27 customers in a new residential development.

Because I was just thinking myself one situation where you might want aggregate customers, you do a deal with a developer and he aggregates a whole new development, a whole new subdivision. And you would want to do that deal in advance. And so you could contract for distribution services and aggregate those customers, see that may work that way.

You know, there is at least the possibility that if

you have 25 customers that there might be some bad debt issue there. And that is an element that is worked into the rates. Whereas if you are only dealing with one marketer, that is not such an issue.

And I don't know how all those things work out. Because I don't -- I'm not a part of rate design. But fundamentally we are not looking for any special rate at all.

And even if there were any changes to the rate, it would never be such that would affect the integrity of the postage rate -- postage stamp rate system.

Exhibit C-31 that has been handed around -- and you will see -- and I encourage you to read this document -- on the second page, and I just put a little tab on the two sections, you can see the four options that Mr. Newton -- he said that he derived -- that were in his evidence, that he derived from this report are there.

I would just point out that under this system, you know, the acronym ESCO stands for Energy Services Company, and I think -- which is equivalent to a marketer. And so I think Mr. Newton has swapped the language there.

And in this report what Mr. Newton identified as a wholesale service is referred to as the single retailer model. And the four options are outlined on the second page.

And the single retailer model is discussed including industry participant's comments both for and against such an issue on pages 7, 8 and 9. And I highlighted some of the parts that I thought were appropriate.

That is where, you know, Mr. Newton sort of derived his conception of the wholesale service or one which we would advocate.

I would point out here, just in your read of this, as I noticed when I went back and read it again this morning, is that one of the issues that is discussed here, and why many of the comments are in this report, at least as I read it anyway, and you read it yourself and satisfy yourselves, is that there are concerns expressed about the effect of establishing a wholesale service on the arrangements made with utilities, existing utilities to unbundle those utilities, and that it might affect, as I think it says -- now the order is addressing the restructuring settlements of the various utilities when they are unbundling.

But my submission of what this report says is that it holds up the establishment of a wholesale service of where they want to go at the end of their unbundling process. Well, here we are. We are beginning at the end of the unbundling process.

And I'm sure when Mr. MacDougall comes back in

rebuttal he is going to say but that this thing talks about billing. Well, sure it does. I mean, Mr. Newton made that clear.

And in fact I think -- I don't actually have a copy of the decision -- but I think in fact in February that the State of New York, as a result of this and a bunch of other consultations, has now allowed what you have disallowed. And that is the marketers to include the utility's charges on their own bill.

And they haven't ruled on the wholesale service issue because they have done that. And they have accepted that option. But again you can satisfy yourselves.

When I was thinking on how I was going to end my submission on this point this morning, it occurred to me that -- and I couldn't find the specific reference in the transcript. And if I do find it I will give it to you.

But I remember during the marketers hearing, and I think it was when Mr. Kirstiuk and Mr. Newton were testifying, that -- and with respect, I think it was the Chair who made a comment about the regulator's role in terms of the marketer side of things. Because we were talking about the code of conduct and all that sort of stuff or about -- and putting terms and conditions on licencing certificates.

And the discussion was then that -- the idea that this

Board should allow -- or the whole design of the system in New Brunswick was that you have a regulated utility, and then when it came to the actual marketing of the natural gas and the operation of the marketers, that it was free enterprise, that the marketplace would govern and that the cost savings that allowing the marketplace to govern would be passed on to the benefit of the consumer.

What we are asking is that you allow the marketplace to govern here, that people who are selling the natural gas, if they have a customer who wants to only deal with the marketer or who wants to aggregate their stores or wants to, as a developer, do we deal with the marketer to have a whole new subdivision included in the system in some fashion, that you not eliminate an option by allowing Enbridge Gas New Brunswick to withdraw what was part of their original proposal to the Province, and direct that they do so. So we have that option. So we can allow the free market to govern.

Thank you.

CHAIRMAN: Thank you, Mr. Stewart. Mr. Holbrook?

MR. HOLBROOK: Good afternoon, Mr. Chairman, members of the Board.

Enbridge has repeatedly emphasized that its contract with Maritimes Northeast is to secure the construction of facilities. That may very well be a consequence of the

agreement, but first and foremost it is a contract for nearly 12,000 gigajoules a day of firm transportation capacity that will be paid for each and every day for the next 20 years, whether used or not. The price tag, as Enbridge has acknowledged, is nearly \$60 million.

Whether Enbridge could have avoided some or all of this cost had indigenous local gas production been available, can only be speculated upon at this juncture. What is not the subject of speculation is that to the extent local gas is delivered directly to the Enbridge system, it does not require the use of transportation capacity on Maritimes Northeast to secure customers on Enbridge's system. Therefore local gas transported on Enbridge's system should not be allocated any of the costs associated with the Maritime Northeast capacity that Enbridge proposes to include in its cost of service.

Enbridge suggests that local gas production and local producers should view this as a marketer issue and not as an issue with Enbridge. This would be true if marketers were the only parties securing this capacity. Presumably a marketer would reflect in its offer for local gas the fact that local gas would not require it to contract for capacity on Maritimes Northeast.

Enbridge, however, has made the decision to contract for this capacity on Maritimes and to load the cost of

this capacity into its cost of service.

This removes the discipline of the competitive marketplace and replaces it with the economics of a monopoly, albeit a regulated monopoly.

MariCo is not here questioning the decision of Enbridge to contract for this capacity but rather how the associated cost is to be allocated. No matter how it is characterized, \$60 million is not an insignificant amount to be added and included in the cost of service.

MariCo appreciates that Enbridge has readily acknowledged in these proceedings that local gas can provide benefits to gas consumers in New Brunswick. We look forward to working with Enbridge wherever it is reasonable to do so.

Local gas producers, however, already face significant hurdles in competing with the larger gas reserves associated with Sable Island. One of the principal advantages for local gas is, as the name implies, its close proximity to market. This proximity negates the need for transportation capacity on Maritimes Northeast. Enbridge's current proposal to roll Maritimes Northeast capacity cost into Enbridge's cost of service would diminish that advantage and create a further hindrance to the development of local sources of gas supply in New Brunswick.

To mitigate the impact on cost of service, Enbridge must secure the highest possible value for its Maritime Northeast capacity. On this point I believe there is a general agreement. However, the means to achieve this objective may not have universal agreement.

It is axiomatic that the more open and transparent the bid for capacity process, the more bidders who will participate. And the more bidders who participate the higher the potential price that can be achieved for that capacity.

Use of modern forms of electronic communication, including electronic bulletin boards and the Internet, conveying capacity availability information in an open and public manner, should encourage marketer confidence in the process.

Enbridge needs to be particularly diligent in reference to assigning any capacity to its marketing affiliate. The Distribution Act may not require Enbridge to treat any marketer differently from any other marketer, including its affiliate, but Enbridge will not instill confidence among potential marketers if capacity is not assigned in an open and transparent manner. This should include some public means to verify that the appropriate bid was ultimately the one that was accepted.

Pre-arranged deals should fully recover the cost of

service for the duration of the assignment, or the public bid process should be utilized to assure procedural fairness and no undue discrimination or favouritism for any particular party.

In summary, MariCo strongly urges that to the extent possible, any future capacity needs on Maritime Northeast, if any, be contracted for by marketers and not by Enbridge, thereby allowing market forces to govern.

To the extent Enbridge has Maritime Northeast's capacity to market, it should utilize a public bid process open to all interested parties. Pre-arranged deals at less than full cost recovery should be avoided, but if permitted, very closely scrutinized.

Since this procedure avoids an open competitive bid process, the term should be limited perhaps to no more than a year to encourage additional market participants when that capacity once again becomes available. It is of critical importance, as earlier noted, to MariCo, that the cost of the Maritime Northeast capacity be borne by customers actually using that capacity and not allocated to those using local gas.

As a final matter, this hearing process has highlighted the various measurement standards presently being utilized for the same unit. MMBTUs for transportation on Maritimes Northeast to the States,

gigajoules for Maritimes Northeast deliveries to New Brunswick and cubic meters for deliveries by Enbridge.

It brings to mind what happened in Baltimore, Maryland, in the late 1800s. It appears that there was a fire that took place in Baltimore and the usual local, at that point in time, horse-drawn fire engine that was being brought to the location -- would have been brought to that location -- was being used elsewhere. So the call went out to the neighbouring facilities in the City of Baltimore, to the neighbouring stations, to provide assistance. And they arrived quite timely. The only problem was is when they went to attach the nozzles of the hoses to the hydrant, they discovered that their nozzles didn't match up with the opening of the hydrant. It turns out apparently that each of the different stations throughout the city were utilizing different standards for the design of the hose and the hydrant. And once they got outside of the normal mode you can guess what resulted. The city of Baltimore burned down that day while a whole series of fire engines stood by watching the process.

I raise that not to suggest that the various forms of measurement that we have discussed here will cause another conflagration, but consistency in terms of the mode of measurement, whatever you choose, might reduce confusion and improve natural gas' acceptance in the New Brunswick

marketplace.

And with that I will conclude my comments. Thank you.

CHAIRMAN: Thank you, Mr. Holbrook. Mr. Zed. Mr.

Holbrook's comments in reference to the fire hydrants sounded very much like when metric came in, and still is with me. Sorry, Mr. Zed. Go ahead.

MR. ZED: I will say apropos his comments, that I am involved on behalf of Energy Source Canada in the Nova Scotia marketers hearings, and that issue has been raised, and so I would urge this Board to take whatever action they think appropriate.

It is a matter of some concern to the gas marketers, most of whom intend to market in both provinces, and it is really a matter of how to communicate to the public and how to maintain an effective advertising campaign in two provinces where the units are different. So that is a matter of some concern. I didn't intend to raise it today, but having been afforded the opportunity I will do so.

CHAIRMAN: Here we have cents per cubic meter. Has Nova Scotia established dollars per gigajoules?

MR. ZED: Gigajoules, which --

CHAIRMAN: Well even I, the layman who is not metric, can understand cents per cubic meter, but --

MR. ZED: I am not going to debate --

CHAIRMAN: -- gigajoule is out there.

MR. ZED: I am not going to debate which of the two is -- but it is a problem that has been raised at our marketing meeting in Nova Scotia. We I believe intend to raise it with the URB and I guess informally we are now raising it with you, but it is an issue that may -- perhaps should be addressed.

CHAIRMAN: Yes, and frankly, it would be unfortunate if we can't co-operate in that regard, you know, and I was not aware that they were proceeding on that basis. Thank you.

MR. ZED: Okay. Mr. Chair, Commissioners, thank you for the opportunity to address you today on behalf of Energy Source Canada. My comments will be brief. We wish merely to offer our comments as a marketing company with respect to the applicants' proposed agreement with M & NP.

Firstly, let us say we view the proposal as positive. And really there are two reasons. Not only because it means that the necessary laterals and custody transfer stations will be built in a timely fashion, we view it positively for another reason. And that is that by virtue of entering FSA, the distributor will have the opportunity, when remarketing its capacity, to develop a liquid city gate market. This may be needed to stimulate the interest of some marketers in this market. Others before me have stated what those reasons might be.

We -- faced with this opportunity we would encourage Enbridge to take advantage of this. However, while encouraging them to take advantage of it, we can't put too many roadblocks in their way. And in order -- in our view then in order to achieve the maximum benefit in stimulating this marketplace, the applicant must have flexibility to market its capacity as freely as possible.

They should not be precluded from dealing with any party in the remarketing of this acquired capacity.

We would respectfully remind this Board that there is legislation in place, Section 69 of the Gas Distribution Act, which was referenced yesterday, which legislation I might remind the Board was thoroughly vetted by the Consensus Committee in its report to this Board, who again vetted those comments in the marketers -- at the marketers hearing in January. It appears to us that to revisit this topic by considering the imposition of any additional restrictions would be unwise at this time.

The statutory mechanisms are in place to safeguard against concerns raised during the course of this hearing with regard to non-arms length transactions. It is open to any aggrieved party to complain to the Board should a transgression occur.

With respect to all other transactions we would merely note that although the applicant is asking for flexibility

in the remarketing of its capacity it must report to this Board, who ultimately will rule whether or not the transactions were prudent. Thus the impact of the applicant's resales on cost of service is not unfettered. It is subject to Board review and Board approval.

With respect to the matter of wholesale service, I will only ask that the Board not revisit the billing issue through another venue. This matter, like the issue of the affiliate code, has already been decided by this Board at the marketers hearing. With respect, we have heard nothing here today that would cause this Board to reopen that issue which has been closed for the time being.

Those are my comments. Thank you.

CHAIRMAN: Thank you, Mr. Zed. The Board is going to take a break and Mr. Blue can do both at one time, his summation and his rebuttal.

I would ask counsel, with an eye to the clock, that they attempt to limit their comments on rebuttal if they could possibly do that, because after we are concluded the summation, the Board has some time it would like to take up with you.

(Recess)

CHAIRMAN: Go ahead, Mr. Blue.

MR. BLUE: Mr. Chairman, Commissioners, the hearing has been about three issues. There is the issue of the Enbridge

Gas New Brunswick firm service agreement with Maritimes and Northeast and whether you should approve the way that Enbridge has entered into it.

The second issue is the assignment of Enbridge's capacity under the firm service agreement to third parties. And the third is the wholesale service and rates.

So let me start with the Enbridge firm service agreement with Maritimes. I think everyone in the room agrees that either Maritimes Northeast or Enbridge must build the facilities that are necessary to connect Enbridge's gas distribution system here in New Brunswick with Maritimes and Northeast's pipeline which goes through New Brunswick on its way to New England, if New Brunswickers are going to have gas.

And if these connecting facilities are not built by someone, then New Brunswickers are not going to get gas. It is that simple.

I think everyone realizes that no marketers have stepped forward to this Board and asked for certificates.

No one has come forward to make commitments to Maritimes to justify building the connecting facilities, and even so -- even though those two connecting facilities were just two branches and I think seven custody transfer stations.

So Enbridge has come forward and cut the Gordian knot

by saying, we will do a deal with Enbridge to make sure those facilities happen. And it has done this even though under the regulatory scheme that the Legislature has put forward for New Brunswick, it has no interest itself in selling natural gas going to those facilities.

In other words, it is not really Enbridge's responsibility to make the commitments to build those facilities, yet it has done so. And the Province compliments Enbridge for having done that.

Now as to how it should do that, Enbridge really had three options. The first option was build the facilities themselves. In the negotiations Maritimes said, I'm sorry, we don't let any third parties build our custody transfer stations. Those are part of our rate base. We will build those. Thank you very much. So that left the two laterals, one to Moncton and one to St. George, for Enbridge to build.

The second option was okay, let's enter into a firm service agreement, Maritimes, but for no quantities. But the price for that was under the Maritimes' policy on tolling and tariff -- tolling and laterals, rather, in its tariff -- was that Enbridge would have to pay an aid to construct of \$12.2 million.

And the third option was the one that Enbridge recommends, which is to enter into a firm service

agreement and negotiate with Maritimes to come up with a quantity that would justify the required facilities. And the quantity was the 11,785,000 gigajoules, Gj's.

And I stress that the evidence that you heard yesterday was that 11,785 was a negotiated number. It wasn't an engineering precise number fallout. And that point was made in response to the issue of whether it should be priced at 60 cents -- or 75 cents.

Now the Province supports Enbridge's chosen option because the evidence supports it. Firstly if you look at schedule -- or exhibit L, schedule 5, what you see is that Enbridge analyzed which of the option would have the effect of keeping the deferral accounts balance at the lowest.

And what it shows is that the Irving -- or that the FSA option that it recommends would be cheaper than making an aid to construct in all offices if it resold 18 percent of the firm service capacity.

It was pointed out in evidence that even if Enbridge could build the two laterals to Moncton and St. George cheaper than Maritimes was proposing to build them, even then that the option that it proposed was better if it could sell 32 percent of the FSA value.

Now the uncontested evidence -- there is no contrary evidence -- is that Enbridge expects to resell 65 to 70

percent of the firm service agreement capacity. And the reason for that is because the business prospects for Maritimes and Northeast Pipeline are very optimistic over the next 20-year period.

They have filed Mr. Langon's presentation at the energy conference in Moncton last week behind their exhibit K, schedule 4.

And what that shows is the demand for transportation service on the Maritimes pipeline is going to do nothing but increase over the foreseeable future.

And this is an important point. Because the capacity that Enbridge has bought can be resold to shippers who don't want to make deliveries in New Brunswick. It can be sold to shippers who want to make deliveries in New England.

So that the market for secondary capacity is a much bigger market than the market for -- than the gas distribution market in New Brunswick.

And by choosing this option Enbridge avoids making any capital commitments. Remember what Mr. Marois said yesterday was if you make the \$12.2 million investment and you have to set it up in rate base, it throws up annual operating costs in the cost of service of about \$2.9 million which if you take the present value of those payments over 20 years, the present value is 19,000,000.

They are avoiding that. They are avoid that expenditure.

And they are avoiding that imposition on customers.

So as I say, the Province supports the method by which that Enbridge has obtained the capacity and supports their request that their costs be -- their cost of that firm service agreement, to the extent that they do not resell that capacity, be included in the cost of service, as the lowest cost option and the one that will have the least effect on the deferral account.

Now I turn to the second point, assignment of capacity under the firm service agreement. It is pretty clear in the evidence -- and Mr. Maclure was at pains to point out that Enbridge has not yet developed a plan on how it is going to release its capacity.

And he said that at exhibit I, pages 11 and 12, exhibit J, schedule 4, exhibit K, schedule 5 and several places in the transcript yesterday.

It is clear that the song that Enbridge is singing on this is don't fence me in. And the Province supports that view because in its opinion what is the best deal for the resale of the capacity that is for Enbridge's customers must be left with the executives of Enbridge.

The executives of Enbridge are experts in the natural gas business. They know the market. They know all about the market for capacity. That is their job to do it. No

one knows it better than them. And the Province believes it should be left to them and that other parties should not try to micromanage that process.

Now Irving Oil Limited -- I'm sorry, Irving Energy Services comes in with a slightly different position. And here I can't help thinking of Longfellow's poem "Excelsior", about the boy that rode with the flag on his lance, the banner with a strange device saying "Excelsior."

Well, I think of Mr. Kirstiuk coming in bearing a banner with a strange device for Irving, open, public and transparent in respect of your business transactions. But that is what he said.

But in cross examination Mr. Kirstiuk agreed that the provisions in Section 69 of the Act, 69 (p), 69 (h) (l) and (o) and all the other provisions of 69 probably does provide for an open, transparent and public form of regulation.

I don't know what operational meaning the words "open, public and transparent" have. They are, as I say, a good banner. But I don't know what more could be required by that than is already required by Section 69 of the Gas Distribution Act 1999.

Now Mr. Kirstiuck also said that -- and Mr. Stewart repeated it today -- that there should be no deal longer

than two years. And the purpose for that is not to entrench anybody with an advantage relative to another marketer.

In the same breath, at the end of his argument today, Mr. Stewart said let the market govern. I don't know how you reconcile those two positions.

The Province does not support a limitation of two years. The Province believes that Enbridge has heard the comments, believes that Enbridge needs to develop a functioning market in New Brunswick as much as Irving wants one, and that it is best left to Enbridge to make a decision about what is going to have the most effect on the deferral account.

The Province would hate to see any good deal that would benefit gas consumers precluded by an arbitrary rule made in advance. The Province believes that the reporting requirements, the other requirements of Section 69, provides ample mechanism for anyone to complain about a particular transaction or situation if that arises. But we shouldn't anticipate them. We should -- we should give the company the flexibility it requires.

Let me turn to wholesale rates. The Province opposes the wholesale rate. And yesterday Mr. Maclure described what he thought was a wholesale rate as possibly including customers from different rate classes, a rate that would

reflect the diversity, i.e. cost saving of having customers of different rate classes in the rate class.

He said the rate would result in customers in the class having different rates for distribution service and similarly situated customers outside the wholesale class, which would be inconsistent with and inimical to postage stamp rates.

The wholesale rate he said also would remove privity of contract between the gas distribution company Enbridge and ultimate gas customers. And he said that that would cause safety system planning and administrative concerns.

Now Mr. Newton on the witness stand responded to these concerns by clarifying Irving Energy Services' position. For the first time we learned on the witness stand that Irving Energy Services would differentiate its wholesale class by Enbridge rate class.

We learned for the first time on the witness stand that Enbridge would show -- I'm sorry, that Irving Energy Services would show Enbridge's distribution charges separately on the bill and that it would be identical to the same distribution service charge for other customers.

And we learned for the first time that they would not at this time seek a rate advantage from Enbridge Gas New Brunswick. They were doing this, Mr. Newton said, simply to attract customers. And gave the impression, or I think

he said that Mr. Maclure had misunderstood Irving Energy Services' plans.

But Mr. Newton also said that if the Board approved wholesale rates, it was not committing not to come back another time in the future and say that our wholesale rate class provides Enbridge with economies and we might want to share in those economies by getting a preferential rate. Mr. Newton would not say that Irving wouldn't do that.

Mr. Newton said that while the rate did not at this time prejudice postage stamp rates, he was not committing that some proposal in the future about the wholesale class would not do so.

And having heard that this issue was raised at the marketers hearing as well, you start to wonder how many times do you have to slay a dragon or are you going to have to slay it?

In addition the -- so at this time we think that the Board should scotch the wholesale rate discussion and just say it is not appropriate at this time because it is too confusing to the customers, to have customers aggregated in different ways.

In addition the Province believes that during this period, right now, natural gas is new in New Brunswick. Enbridge Gas New Brunswick, the gas distributor chosen by

the Province, should have a chance to establish a relationship with the customers to ensure that safety and system planning and education about gas issues can occur directly and without any confusion on the part of the customers about who is responsible for that.

So we believe there should be privity of contract between Enbridge Gas New Brunswick and its customers at this time.

And this was another reason why the Province submits that the Board should not approve wholesale rates at this time or give the impression that they will be approved at anytime in the future.

If at sometime after a few years experience there appears to be a strong demand for this kind of a service, it might be appropriate then, but not right now.

I will just have a look at my rebuttal notes. I think I have done most of it on the way by but let me just check.

Yes. I just want to comment on Mr. Holbrook's plea about local gas producers should not be allocated any of the class of firm service agreements even though they might be users of the system. I note they are not yet. They don't -- they are not even a local gas distributor yet. But let's assume that they were.

That would be quite, in my opinion, contrary to normal principles of cost allocation. When I used to do Ontario

Hydro rate cases, manufacturers around Niagara Falls always said, we should only have to pay for hydraulic energy because Niagara Falls is next door and that is really the kilowatts we use, not all those expensive ones from the nuclear plants and coal-fired stations.

And that was never accepted as an argument. All the costs of the system have to be allocated to all customers fairly. And again if there is any advantage to customers from having a local gas distribution service, then all customers should share in those advantages as well.

So I just would like to register the Province's opposition that one particular group of people should get a break relative to other customers.

And also I wonder what Mr. Holbrook would say if local gas production wanted to be transported to somewhere else on the Maritime system. He would then have to use those facilities that he doesn't want to have the cost allocated to him on.

Those are my submissions.

CHAIRMAN: Thank you, Mr. Blue. Mr. Zed?

MR. ZED: Nothing on re-direct.

CHAIRMAN: Thank you. Mr. Holbrook?

MR. HOLBROOK: Just a quick comment in response to Mr. Blue's observations.

First, I am aware of jurisdictions where there are

incentives created for local gas. I am also aware of circumstances where projects such as the Niagara Hydro project have allowed a portion of that electricity to be available to municipalities and to businesses that are in close proximity to those facilities. So that concept is out there.

In answer to his hypothetical about how the producers would choose to treat the scenario under which they would utilize Maritimes Northeast, I think the answer is quite simple and straightforward.

If producers would utilize Maritimes Northeast to distribute gas elsewhere in the province or outside the province they have no difficulty in paying their fair share for that capacity. Their concept is quite simple in the sense that if they are not utilizing it, and the customers they serve are not utilizing it, then those customers should get the benefit that the local gas can provide.

CHAIRMAN: Okay. Mr. Stewart?

MR. STEWART: Well, Mr. Chairman, I will just make my brief rebuttal comments from here.

CHAIRMAN: You said brief in your initial too to me before the hearing --

MR. STEWART: I really mean it this time.

CHAIRMAN: -- and it was 40 minutes. That's not brief in my

books. Go ahead, Mr. Stewart.

MR. STEWART: My comments are really simply this, and that is with respect to Mr. Blue's commentary about Mr. Newton's evidence on the wholesale service, I mean it's a little bit of the damned if you do and damned if you don't.

Enbridge identified some concerns that they had with respect to the establishment of a wholesale service. They said, you know, it will disconnect us for safety reasons and it will do this and it will do that.

And so Mr. Newton on behalf of Irving Oil said, well what is really important for us is that we establish this sort of, you know, seamless approach to our customers, and so to the extent that we can modify our proposal to make you happy and still achieve what we want to do, then we are prepared to do that. You know, we are prepared to put stickers on the hot water tanks and we are prepared to put the distribution charges clearly on the bill and we are prepared to put inserts and communicate and facilitate communication between Enbridge and the end users.

And then when you say that, it's held up, well, you know, you are really doing something different than a wholesale service because you would have stuck to your original guns if you wanted a wholesale service.

And I would just make the brief submission that

attempting to find an appropriate middle ground should not undermine the importance of the service from the marketer's perspective.

Finally, and just in reflection of a comment that Mr. Zed made with respect to, you know, reviewing some of the issues that went forward in terms of the disposition of the capacity, you know, and he related it in some ways back to things we had talked about, Section 69, at the marketer's hearing and before the Consensus Committee.

But all those discussions were never contemplating a circumstance where Enbridge would be going to contract capacity on the system. And so just like now, and I am sure maybe next year or three years from now, an issue has arisen which needs to be dealt with.

And so here we are and we made our submissions with respect to the effect of Section 69 and the disposition of this capacity. And that really is a new issue if -- even if we are dealing with a familiar set of rules.

Thank you.

CHAIRMAN: Thank you, Mr. Stewart. Mr. MacDougall?

MR. MACDOUGALL: Mr. Chair, I will be about five minutes or so but not much longer than that.

Just to begin with Mr. Holbrook's comments, and I guess some of this might be a small repetition of Mr. Blue but I think it is important that it come from the

applicant, I think what is important to know at this time is there is no local gas at this time available to serve the markets that Enbridge Gas New Brunswick is talking about and these markets have to be served. So the deal with M & NP is to ensure those markets do get served.

If local gas does become available, if Enbridge's distribution system is hooked up to the M & NP system, then through methods of displacement local gas could displace M & NP gas that wouldn't flow there, there would be a huge benefit to the local producer who can contract to sell their gas throughout the Enbridge distribution system and throughout the M & NP system and elsewhere.

Obviously there is benefits to the local gas producer to be connected to the M & NP system, and I don't think Mr. Holbrook would contend that any local gas producer would be -- want to be cut off from the M & NP system and not be able to sell its gas contractually through displacement to other parties.

And the other thing that is important to note is as of today and as of what we hope this Board to approve is EGNB's proposal is for non-discriminatory postage stamp rates. That's what we put forward, is non-discriminatory postage stamp rates and that's what we expect is appropriate for the marketplace at this time.

I now have a few comments on Mr. Stewart's argument

and I think I will start with the M & NP issue.

I guess my first point is that I see some incongruities in what Irving Oil Limited is putting forward. The first principle that they raise is that Enbridge Gas New Brunswick with respect to the resale of this capacity should get the highest potential value.

Then Mr. Stewart acknowledged that there were other principles, but he did say this was the most important consideration, although there are other considerations.

But then he went on into four guidelines after the four principles. And I have a big problem with seeing how his guidelines can tie into the highest potential value. They seem very incongruous. Limiting pre-arranged deals unless they are full toll, limiting sales to two years, limits that won't be on other players in the market who will be trying to get the best value for their capacity, and the best value for this capacity is the best value for the ratepayers in the province of New Brunswick.

I believe he is firmly correct that the highest potential value should be the goal and I believe the proposal Enbridge Gas New Brunswick has put forward, that it be allowed to act flexibly in the market, as everyone else can, will get the highest potential value.

Irving Oil also seems in my mind to miss the point when they talk about certain deals shouldn't be there

unless there is full toll. This is a way better deal at much lower than full toll. That's why it was entered into.

If it was only valuable to get full toll, I would highly doubt that Enbridge Gas New Brunswick would do this deal, it would probably do something else, because this is a very complicated deal. It's complications are worth it because of its benefits.

To try and maximize every deal at full toll, you know, that's what will be the goal. Sometimes it will be to try to get more than full toll.

But to limit certain deals to a time period, to only full toll, misses the point that, you know, this is a really good deal to start with. And then you should maximize the flexibility to make it a better deal, and to hopefully maybe recover the full cost. That would be excellent. And if we have problems with marketers in winter periods in the northeast maybe we can get a lot of value in the winter, maybe the cost will be even better, even better for all the ratepayers.

But that seems to always be missed. There is never any comparison. It's always, once we are over the hurdle then we have to put a whole bunch of rules in. That's not the case. The thing is we are over the hurdle. This is a better deal. And maximizing value is what we should all

be looking for in my view.

On the two year term in particular, I believe that completes an absolutely unlevel playing field.

Irving Oil's submission is that we have to watch out for the smaller players. With the greatest of respect to Mr. Stewart and to Irving Oil Limited, I believe Mr. Stewart is here representing Irving Oil Limited. I believe the rules he is putting forward are on behalf of Irving Oil Limited, and I don't believe he is entitled to speak on behalf of other players in the market.

The other marketers to date have not shown up at these hearings against these issues. Irving Oil Limited has. Energy Services has shown up but they don't have opposition. The exact opposite.

My final comment on the M & NP issue is with respect to Section 69(o) of the Act. This was raised by Mr. Stewart. Section 69(o) makes it mandatory that the gas distributor comply with certain -- with certain concepts.

The gas distributor, Enbridge Gas New Brunswick Inc., intends to comply with the Act, you know, anything it sets out in the Act Enbridge Gas New Brunswick Inc. intends to comply with it in a proper and appropriate manner. It does not intend to comply with the Act by having other parties tell it how it should comply with the Act.

With respect to the issue of the wholesale service,

Irving Oil Limited has said in their argument today that there is not one person, and that there should be one person for the customer to deal with.

It's true there isn't one person because this is an unbundled system. And with the greatest respect again to Irving Oil Limited, they are not the distributor. They may wish to be the distributor but they are not the distributor.

The distributor has a role to play in this marketplace and has a role to play which involves it meeting and knowing its customers in the early years, and making sure those customers know its role. This is an unbundled market. What Irving Oil Limited is attempting to do is to rebundle it under the marketer rather than the distributor. I really think that that is inappropriate.

With respect to the wholesale rate and going back to the comments made in argument from Irving Oil Limited, they talk about doing things for smaller market players. The problem with the wholesale rate, if you are a small marketer and you don't have a billing system, maybe you can't offer a wholesale rate.

A wholesale rate is to the benefit of Irving Oil Limited. A wholesale rate is not necessarily to the benefit of a small marketer who doesn't have the ability to conduct the activities of a wholesale rate. An ABC

billing service is available from the distributor for that type of service to protect those marketers. That was the whole purpose of putting forward the ABC billing service, which is optional.

Why give Irving Oil Limited the ability to be the only wholesale rate, or potentially only wholesale rate, be the only person who can buy our capacity, and on and on. Again I think that is very inappropriate in this marketplace.

I would suggest that the Board look at the evidence on these issues. Again, with the greatest of deference to Mr. Stewart, he argues a lot of points, I am not sure that the evidence is there to support those points.

I would like to just speak very quickly about the State of New York Department of Public Service document that was put in today. It's exhibit C-31.

Irving Oil Limited submitted this staff report on alternative billing arrangements from the State of New York. In it staff identified a single retailer model which Mr. Newton characterized in his evidence as a wholesale rate.

There are two points I would like to make. One, is that this staff report does not indicate whether this service is the type that Mr. Newton has proposed, that is, a bill aggregation model. The other point is that this is

a staff report. There is no evidence that this was or is approved for gas marketers. No evidence at all.

I, unlike Mr. Stewart, will not make comments on foreign law. I believe comments on foreign law are matters of evidence, not argument, and I think the Board should take Mr. Stewart's comments on what the federal PUB did in New York in that spirit as well.

In closing, Mr. Chair, just two brief comments, not necessarily in the nature of rebuttal but that I think are important to make.

One is that Enbridge Gas New Brunswick really would encourage the Board to address this issue in a timely fashion. There is another player involved, that being the National Energy Board. There is a lot of players, one being M & NP. I am told by my colleagues they have already made public notice of their plans in the paper. As you are aware, Mr. Langan has talked about this process.

If there is any problems with this proposal that the Board sees, it would be very useful for the applicant and all the other players to know them in a timely fashion in that activities have to take place that involve the jurisdiction of another Board as well.

I just raise that not in order to create any greater stress on your lives, as I know there is a lot of it now,

but the problem is the other regulator in this matter and we would encourage that this issue be looked at on a timely basis.

And I guess in closing, just for the benefit of the marketers, what I would like to say is that if there are marketers in this room or otherwise who are interested in coming to New Brunswick and who want to attach to these markets, Enbridge Gas New Brunswick has 11,785 GJ's and do we have a deal for you. So -- not actually. We would like full toll, but -- said with the greatest of facetiousness.

CHAIRMAN: Thank you, Mr. MacDougall. The Board wants to thank -- you have given us lots of food for thought. And, no, Mr. MacDougall, you can't put any more pressure on us.

I have a recommendation to counsel though in just closing this part this afternoon, and that is that they try and update their analogies a bit more. I just noted this afternoon we have slayed a dragon, we have used lances and banners, and we had horse-drawn fire apparati.

Well just following up on Mr. MacDougall's remarks and wanting to be timely. It's here somewhere. Now that we have, I think, just concluded the rate hearing, the Board wanting to be timely, and you will understand why, has a portion of the decision in reference to the rate hearing that we would like to give orally this afternoon. And

when we do so, you will understand why. There is timing issues involved in it. It will be incorporated verbatim in our full written decision which will be produced later and in both official languages. There may be some changes in grammar or something like that. But basically that's it.

And it will be under the heading of Target Rates. EGNB proposed that a market based approach be used for the setting of target rates during the development period. The Company also proposed that rates be on a postage stamp basis. This means that the same rate applies to all customers in the same class, no matter where they live in the province. No party objected to either of these concepts.

The market based approach starts with the premise that the total delivered price of natural gas to the customer must be below the equivalent price for fuel oil. EGNB proposed that its distribution rates be set so that the burner tip cost on an annual basis to the customer would be approximately 30 percent below the fuel oil costs in the residential market; 15 percent below the fuel oil costs in the light fuel oil markets; and five percent below the fuel costs in the heavy fuel oil market.

The starting point, therefore, is to estimate the burner tip prices by rate class for the competing fuel and

to apply the appropriate discount. This provides the estimated total delivered price for natural gas to the customer.

The next step is to back out from this total delivered price -- I will read that again. The next step is to back out from this total delivered price, by rate, class, the forecast costs of the commodity, transportation tolls, load balancing costs and gas marketers' profit margin. The residual amount is the target price, by class, for distribution, that EGNB proposed to charge.

The Board recognizes that there must be an incentive for customers to switch from their existing energy source to natural gas. The Board considers that a market-based approach to establishing the target distribution rates for EGNB is appropriate during the development period. The Board also considers that postage stamp rates are appropriate.

EGNB proposed that it would not charge customers any more than the Board approved target rates during a given year. The target rate concept therefore provides a ceiling or a cap. EGNB also proposed that it be given the opportunity to adjust the target rates, on an annual basis, to respond to market conditions if necessary. There were no objections to these proposals. The Board considers that it is appropriate that target rates may be

adjusted on an annual basis and that during a given year target rates will not be increased.

EGNB requested that the target rates filed in its evidence be approved by the Board. EGNB also requested that it be given the flexibility to do a one-time adjustment to the target rates prior to their implementation on October 1, 2000. This exceptional flexibility was requested because market conditions may change considerably by then.

There was considerable discussion in the cross examination of EGNB witnesses by Mr. Stewart, counsel for Irving Oil Limited, on the actual values used by EGNB for the various items referred to by the Company in calculating the target rates. It is clear that given the time elapsed since EGNB prepared its proposed target rates, the values for certain of the items may have changed significantly. This view is supported by EGNB's desire to be able to change the target rates before October 1, 2000. EGNB stated that the change may decrease or increase the target rates.

The Board considers that the initial target rates should be set on the basis of information that is as accurate and current as possible. It is also important to have rates available as soon as possible so that the marketing of natural gas to customers can begin in a

timely fashion.

The expected timing for the release of this decision is such that, if the Board were to approve the target rates as filed, EGNB would need to file any proposed changes to the rates almost immediately after receiving this decision.

The Board does not consider that it would be appropriate to approve rates with the very real possibility that they could be changed in the matter of a few months. It would do little good to the introduction of natural gas in New Brunswick if rates were to change so quickly, particularly if the change were to result in an increase to the rates that had been previously communicated to the customers.

The Board will approve the market based methodology of setting target rates as proposed by the applicant. However, the Board will not approve the target rates as filed. The Board directs EGNB to file proposed target rates that are based on current information together with supporting evidence to show how the value for each item was established. The Board, together with the parties, will establish a time-table for this process. It is the Board's desire to issue its decision on the target rates in time to permit an orderly start to the introduction of natural gas in New Brunswick.

And that's the end of the decision. And in that regard the Board has prepared and Mr. Goss will pass around a tentative -- well it's really just a time-table that we have set forth so that we can discuss it this afternoon.

We will certainly take into consideration anything that the applicant or any of the parties have to say about that. We recognize a lot of time and dates that are important before this Board. There is, for instance, we understand there is a wedding in June.

MR. HARRINGTON: I don't get to go to Bora Bora, I guess.

CHAIRMAN: Well, no. Seriously, if you want to go to Bora Bora, okay. No. We have put those out there and one of our constraints is that this Board is, you know, staff and some of the commissioners are involved in certain things in the month of August.

And I know that Mr. Stewart had indicated he would like to see the rates in place the 1st of September and we are trying to meet that. But the Board is perfectly open to move these dates further on into the summer with the caveat that August is going to be tough for us to sit down and arrive at a decision and issue it.

So I will give you a few minutes to look at that. And if anybody has got a moose draw or Crown waters, why we observe those things too. Take a few minutes and talk

about it. Actually we will take a break and come back in in ten minutes time.

(Recess)

CHAIRMAN: Before I ask counsels' comment, I want to point out the last thing on that tentative time-table and that's oral hearing if necessary. And frankly we are approaching it on the basis that we may very well be able to start doing it all as a written hearing. Okay. But we will reserve that right. And so if we were to have one, we have to -- have to pick a date now, I think, on everybody's calendar.

Mr. MacDougall, you have had a chance to look at it. What is the applicant's reaction to it?

MR. MACDOUGALL: We have put Mr. Harrington aside and his reaction doesn't count because Mr. Maclure is older. So we will say Mr. Maclure's reaction.

One comment before we do that, Mr. Chair, the applicant would like to very enthusiastically thank the Board for having already come up with a portion of that decision. That is nothing short of excellent work in the view of the applicant. And they are delighted to see that has occurred.

With respect to the time-table and the comment you just made, Mr. Chair, about the potential for a written or oral hearing, we just have one comment on the schedule.

We believe this schedule is doable for the applicant.

We do have a few people who will be in different places at different times. And we were wondering if -- I just wanted to go through this and see exactly what it meant. It appears the applicant would file its evidence.

There would be questions to the applicant, responses to others, and the written comments from parties we are presuming are written comments from other parties to EGNB not including the applicant.

And I guess we were wondering if there was a period after that where the applicant could comment on that evidence. It doesn't appear that there is a spot in there. And that's the period where we would have the most difficulty.

And we were thinking if this written comment from parties was supposed to be from those who had asked EGNB questions, that we could have to the 30th of June to respond to that. Again, we are just a little confused about what the process is in that step.

CHAIRMAN: Yes, okay.

MR. MACDOUGALL: Because we seem to not be able to respond.

CHAIRMAN: All right. I think you have characterized it properly. And we see no difficulty with putting in that you could make comment to the Board on the written comments of the parties by June 30.

MR. MACDOUGALL: That would allow Mr. Harrington to go and come back. So that would be excellent.

CHAIRMAN: Oh, good. I was going to say, you know, Mr. Maclure has been married for years, so it is not really very important to him.

MR. MACDOUGALL: It appeared that Mr. Harrington's marriage wasn't really important to him too.

MR. HARRINGTON: I don't want that on the record.

MR. MACDOUGALL: That is not true. We are trying to accommodate Mr. Harrington as best we can.

CHAIRMAN: Okay. My only thought on it -- and Mr. Goss, if we do put that in for June 30, we probably should look at pushing the possible oral hearing a little later in July.

MR. GOSS: The one consideration, Mr. Chairman, of course is we would have to schedule a facility such as this and arrange for reporters and so on. I don't know on what notice you can cancel all that without considerable expense.

And that was the only thought about leaving some time between the last comments coming to the Board, allowing the Board some time to decide whether an oral hearing was necessary or not, and still hopefully cancel any arrangements.

CHAIRMAN: First of all, do you think, counsel, that we could do it in our boardroom? I would guess we probably

could. Let's put it this way --

MR. MACDOUGALL: We won't have to have nearly as many people as at the rates hearing, you know. We will have two or three, so --

CHAIRMAN: Okay. The Commissioner from Fredericton is thinking of their climate and not Saint John's, because she is concerned about lack of air-conditioning.

Now mind you, if we get our one week of summer in the week that we choose, we are in trouble. But otherwise --

MS. ZAUHAR: In July.

CHAIRMAN: I'm going to suggest we push it ahead to the week of the 17th of July. Now does that cause anybody here problems at this time? No salmon draw water, nothing like that?

MR. MACDOUGALL: We are relying on the if necessary, I think, Mr. Chair, so --

CHAIRMAN: A couple of days set aside at this time, you know. And hopefully we won't have to do it. Okay. How about 18, 19 of July? Good. Okay.

And I will ask the shorthand reporter right now. How long in advance are we allowed to cancel? Okay. So that is no problem then.

And will you mark that in your book? Great. Thank you. Okay.

I had an opportunity during our brief recess to speak

with Mr. MacDougall about the Board's offer to postpone the start of the construction hearing until noon. And I think there is a meeting which is going to occur after this.

If, Mr. MacDougall, it appears that it would facilitate anything in reference to the municipalities and that sort of thing, that we postpone it till 2:00 in the afternoon, let us know. And we will send out a fax to all the parties or whatever.

MR. MACDOUGALL: We will let you know as early as possible tomorrow, Mr. Chair.

CHAIRMAN: Thank you very much. I will see some of you on Monday.

(Adjourned)

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

Reporter